Public Utilities

FORTNIGHTLY

November 23, 1939

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS

-Automatic

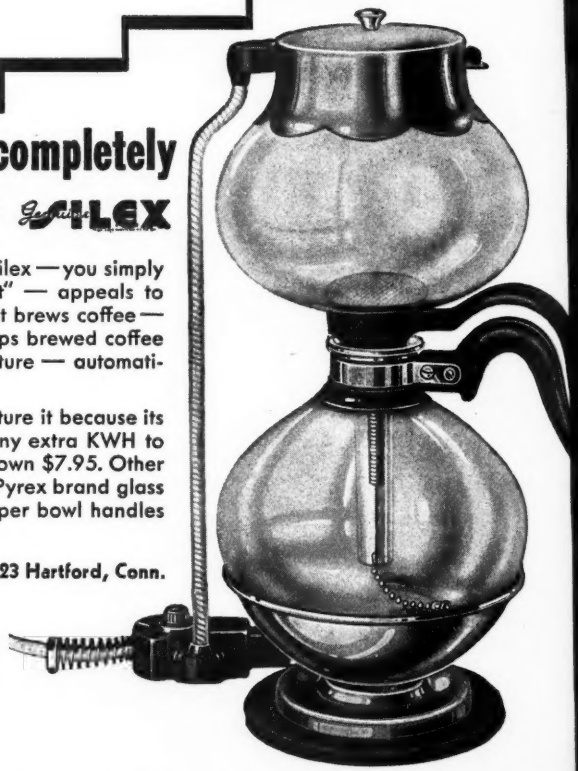
steps up your loa

The new completely Automatic Genuine SILEX

The new automatic Silex — you simply "set it and forget it" — appeals to your users because it brews coffee — automatically. Keeps brewed coffee at drinking temperature — automatically.

You will want to feature it because its longer use adds many extra KWH to your lines. Model shown $7.95. Other models from $8.95. Pyrex brand glass used exclusively. Upper bowl handles on all models.

The Silex Co., Dept. 1123 Hartford, Conn.



$7.95 UP

Genuine SILEX GLASS COFFEE MAKER

TRADE MARK REGISTERED U.S. PAT. OFF.

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Financial Editor—OWEN ELY

Public Utilities Fortnightly

VOLUME XXIV *November 23, 1939* NUMBER 11

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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Pages with the Editors

THIS year it certainly should not be difficult for Americans to find reasons to be grateful on Thanksgiving Day. The obvious reason, of course, is the Atlantic ocean, which separates us from the European maelstrom. This should, in itself, be enough basis even for two Thanksgiving Days in those jurisdictions where local authorities differ with President Roosevelt on the proper date for carving up the gobbler.

HOWEVER, a few days ago we received a rather original suggestion for a Thanksgiving message for this year in a letter from L. G. Elliott, president of the LaSalle Extension University. He points out that in expressing our traditional appreciation to the Great Giver, we have heretofore generally stressed the festival nature of the holiday and perhaps overlooked its more charitable implications. President Elliott stated:

> ". . . Might its real meaning not be spotlighted and its value extended if, during the week in which Thanksgiving occurs, we all tried to express our appreciation for favors done, not by the Creator alone, but also to our neighbors, our family, our friends, our customers, our patrons, and others who cross our path? Many of us are too prone to take for granted many kindly acts, and expression of appreciation might start a great chain of better understanding and finer human relations."

T. N. SANDIFER

Townsendism is shining up the utilities as a tax target.

(SEE PAGE 659)

FERGUS J. MCDIARMID

John Bull can take his public ownership and he can let it alone.

(SEE PAGE 675)

CERTAINLY this kindly thought embraces a point well taken; namely, that gratitude, like charity, might well begin at home. And surely the simple word of thankfulness to our own intimates should be at least as pleasing to the Dispenser of all benefits as a ritualistic banquet designed principally for our gastronomic satisfaction.

IT is not that we have anything against turkey with trimmings, *per se;* it's just that before resigning ourselves to the contemplation of the groaning board we would like to take this occasion to thank all of our readers, contributors, friends, critics, and others who have interested themselves in the pages of the FORTNIGHTLY during the past year, or prior to that, for the time they have given to our efforts. We hope that they have received some benefit thereby, as we surely have because of it. We hope, also, that the coming year will bring additional benefits along this line to all parties concerned.

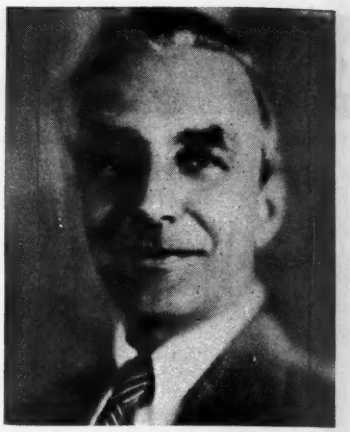
AFTER listening to the recent debate over the neutrality bill (we really didn't listen to a bit of it, you understand, with the newspapers doing such a grand job of reporting it), we can appreciate that the distinction between an aggressor and a nonaggressor can become so delicate as to border on the realm of metaphysics. But, diplomatic declarations to one side, if you backed the average Englishman, German, or Frenchman into a corner and asked him what he was fighting for, he would probably reply for Britain, Germany, or France, respectively.

IN other words, the rank and file of a nation's population do not voluntarily go to war unless they are convinced that their national institutions, customs, and so forth are in danger of being changed by hostile interference in such a way as will not be pleasing to them. Each nation has its own traditions, of course, which are respectively cherished by the typical citizen of that nation.

EVEN the public utility business has developed quite differently in various countries, and that development has become part of the character of the various countries as we know them today. It was over a year ago that FERGUS J. MCDIARMID, the Indiana insurance executive who has often written for the FORTNIGHTLY, found himself in England during the peak of the Czechoslovakian crisis which resulted in the celebrated but ill-fated 4-power accord at Munich.

MR. MCDIARMID, being of a financial turn of mind and always interested in public utilities, had intended to use some of his time in London in the collection of information about the financing of British public utilities. But he found that in the course of his investigations he had to walk over sandbags and stumble across air raid shelters, just as any American would have to do if he were in London today. The resulting article is a peculiar mixture of war-time atmosphere and British utility financing. Needless to say, this proves to be a very timely temper for an article, in the light of recent developments abroad. MR. MCDIARMID is a graduate of the University of Toronto ('28) and has for some time been a security analyst for the Lincoln National Life Insurance Company of Fort Wayne.

WE welcome a newcomer to the roster of FORTNIGHTLY contributors with the publication in this issue of an article on the tax outlook for utilities by T. N. SANDIFER. The author has spent twenty years writing national news, most of it from Washington bureaus or press associations, or as special correspondent to magazines in various fields. MR. SANDIFER was a White House correspondent for the International News Service during part of the present administration, and has handled public relations in various parts of the country for trade associations and other national organizations.



JAMES H. COLLINS

A loyal employee is a utility's choice advertisement.

(SEE PAGE 667)

JAMES H. COLLINS, whose article on utility employee relations begins on page 667, is another fairly regular contributor to the FORTNIGHTLY. MR. COLLINS was born in Detroit in 1873 and began writing around 1900. Since that time his published writings on business subjects have been too numerous to enumerate here. He was a frequent contributor to *The Saturday Evening Post* and gained experience in government methods during the World War as a volunteer under Herbert Hoover's Food Administration, George Creel's Committee on Public Information, and the old U. S. Shipping Board. For the last nine years he has been editor of *Southern California Business*, monthly magazine of the Los Angeles Chamber of Commerce. Since 1926 he has resided in Hollywood, Cal.

IN the next issue we are planning to present another article on the TVA yardstick by Professor Martin G. Glaeser, of the Wisconsin University faculty and former TVA chief power planning engineer. There will also be a discussion about the recent plight of the railroads by Lester Velie, financial editor of the New York *Journal of Commerce*.

THE next number of this magazine will be out December 7th.

The Editors

Two views of Inactive Record Rooms established by the San Antonio Public Service Company.

How To Organize An Inactive Record Room

For electrical utilities facilitating compliance with the Federal Power Commission's Order No. 54. For gas and water companies providing close control over priceless assets.

THE EXPERIENCE OF THIS LARGE TEXAS UTILITY CAN BE DUPLICATED RIGHT IN YOUR OFFICES

The San Antonio Public Service Company, like your own organization, had accumulated records for years. Every available corner was filled with them. There seemed no end to the flow of inactive, but still valuable accounting records, correspondence and forms. The space problem became pressing. The reference problem grew serious.

A PLAN IS ESTABLISHED

It was decided to bring inactive records under control. Remington Rand was invited to prepare suggestions. Our blueprints demonstrated practical arrangements for three new Inactive Record Rooms, each to serve adjacent departments. Our equipment recommendations revealed compactness, flexibility, accessibility, never previously experienced. Over two thousand Remington Rand Steel Transfer Cases were installed—in drawer sizes that matched the various records they held. A new era of record usefulness began at the San Antonio Public Service Company.

A SPECIALIZED SERVICE

Remington Rand frequently assists in the organization of Inactive Record Rooms. Our Public Utility representatives are particularly able to render this service. For electric companies they facilitate compliance with the Federal Power Commission's Order No. 54 governing record preservation. For gas and water companies they set up procedures and devise floor plans that bring valuable papers under strict control.

SEND FOR THIS NEW BOOKLET

A new Remington Rand booklet, "Retention and Control of Inactive Records", will give you the facts you need for setting up an Inactive Record Room. It's yours—free of cost and obligation. Use the coupon!

Remington Rand Inc.
BUFFALO · NEW YORK
BRANCHES EVERYWHERE

Send for this Booklet

Please send me at once "Retention and Control of Inactive Records", LB-228. No obligation!

Name.....
Company.....
St. & No.....
City & State.....

In This Issue

In Feature Articles

In Financial News

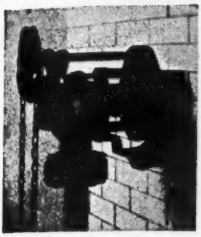
In What Others Think

In The March of Events

In The Latest Utility Rulings

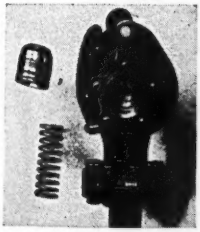
PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 193–256, from 30 P.U.R(N.S.)



VULCAN VALVE HEAD, LG-1

The Vulcan Automatic Valve Operating Head is an advanced development for the high and ever increasing higher pressure and temperature conditions encountered in modern steam plants. Simplicity is the keynote in design and construction. A piston valve steam actuated thru a pilot valve provides positive operation—makes Vulcan Automatic Heads the greatest step ahead in Soot Blower Design in the last 15 years.



VULCAN VALVE ASSEMBLY

Vulcan Valves of completely corrosion resistant materials and stainless steels are designed for immediate accessibility; they are so successfully designed that of thousands in use no valve of this type has ever failed in service. Vulcan construction permits adaptation to every increase in pressure for modern boilers—no valve stems to break—no opening or closing against steam pressure—no regrinding of valves is ever required—valve packing eliminated. All Vulcan Heads are equipped with Vulcan pioneer Under Beam Supports which have eliminated the scrapage of elements.

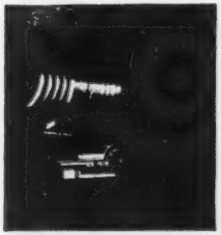
Lowest Cost? . . . NO!
Highest Quality?
emphatically YES!

VULCAN
SOOT BLOWERS

—are built with but one object—to provide industry with the highest quality equipment of this type it is possible to build. Every steam plant offers new problems in soot removal—Vulcan Engineers have successfully solved thousands of such problems. Vulcan installations are soundly designed, individually designed to do their work efficiently and economically—

to cut fuel costs and provide real savings in steam production.

From the desks of design and layout engineers to drafting room to factory craftsmen and to field service, Vulcan personnel takes pride in providing a personalized installation, built to exacting standards for long service and economical operation—backed by a record of lowest maintenance. *Ask the Vulcan Engineer representative why Vulcan must build to highest standards only.*



VULCAN VALVE DETAIL

Vulcan Soot Blower Corporation • Dubois, Pa.

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

LUTHER PATRICK
U. S. Representative from Alabama.

"We are on the pacific side of the Atlantic."

JOSEPH M. DODGE
President, The Detroit Bank.

"There is rarely ever enough capital to offset bad management. . . ."

ROBERT H. JACKSON
Solicitor General of the United States.

"The Federal circuit courts of appeals are the least understood courts in the land."

CARL W. HANER
Manager, Bluefield Gas & Power Company.

". . . it is time to put gas on the offensive, rather than having it always on the defensive."

THEO KEN
Writing in "Public Ownership."

"Norway, Sweden, and Switzerland are the most peaceful nations in Europe. Reason: They have public ownership."

HERRON PEARSON
U. S. Representative from Tennessee.

"Rural electricity more than almost anything else can help the farmer carry out soil-conserving farm practices."

EVERETT M. DIRKSEN
U. S. Representative from Illinois.

". . . one can think very highly of a government administrator and still not give him the keys to the Federal Treasury."

H. STYLES BRIDGES
U. S. Senator from New Hampshire.

". . . the annual loss to the coal industry as a result of the complete TVA output will amount to 5,751,000 man-days."

PHILIP A. BENSON
President, American Bankers Association.

"To say that industry no longer offers opportunity is to say that the creative power of the American spirit has come to an end."

EDITORIAL STATEMENT
Forbes.

". . . as long as electric power is neither wholly government-owned nor wholly privately owned, there will be a power controversy . . ."

LOUIS LUDLOW
U. S. Representative from Indiana.

"Time was when domestic air mail was a heavily subsidized service, but in recent years it has been approaching the self-sustaining point."

CHARLES H. LEAVY
U. S. Representative from Washington.

". . . the TVA is itself a project now so far along that neither those who are in principle opposed to the government's engaging in activities of this kind nor those who have selfish motives can defeat it."

CARTER GLASS
U. S. Senator from Virginia.

"I have experienced so much trouble in learning when I am right and when I am wrong on this [Gilbertsville dam] question, that for the first time in my senatorial career I have voted on both sides."

J. WILLIAM DITTER
U. S. Representative from Pennsylvania.

"We have had six years of this New Deal. After six years of lending and spending, of ranting and chanting, of dealing and squealing, the problems which you [Democrats] promised to solve remain unsolved."

J. B. MCCRARY
President, McCrary Engineering Corp.

". . . no money can bring greater benefit to our people, nor is more certain of repayment, than that which the Rural Electrification Administration has lent to enable farm people to serve themselves with electricity through their own coöperatives."

LISTER HILL
U. S. Senator from Alabama.

"The power companies of our country have failed to recognize their just obligation to society—to the public. They have failed to aid the government in national security in not promoting and encouraging the electrometallurgical and electrochemical industries of our country."

CHARLES I. FADDIS
U. S. Representative from Pennsylvania.

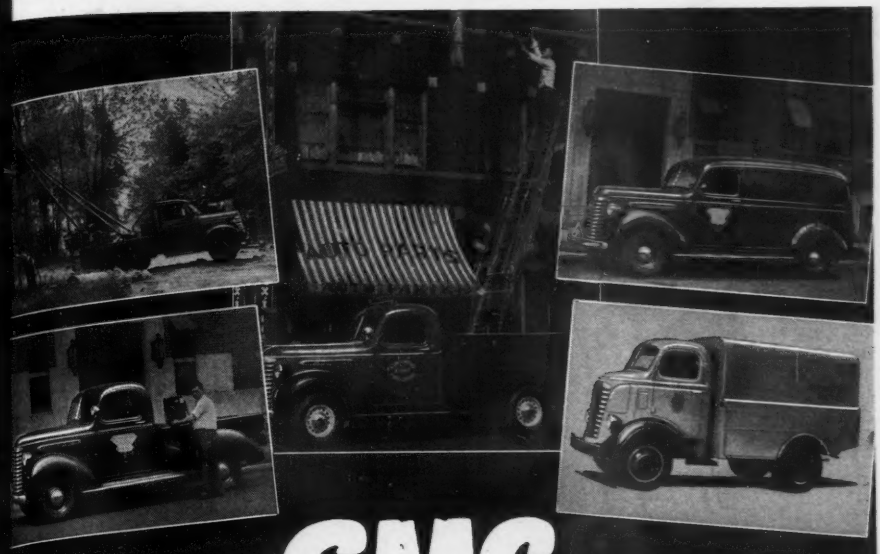
"The evidence in regard to the production of electricity in connection with the TVA from the very first has shown that electricity has never been produced as cheaply by water power as it has by steam when it has been necessary to buy sites composed of farm land for power dams."

JOHN J. DEMPSEY
U. S. Representative from New Mexico.

"We have heard much criticism of an expensive, top-heavy bureaucracy being built up by Washington, yet we find in the PWA an agency whose administrative expense is lower than any other save one in the whole government, totaling less than one-half of 1 per cent of the total cost, releasing 99½ per cent for the work it was created to do."

HARRY FLOOD BYRD
U. S. Senator from Virginia.

"Our public debt—national, state, and local—now averages $430 for every man, woman, and child in the country. The present generation has placed a mortgage on all the people and on the property of all the people in order to prime the pump for the present generation. We are handing down to our children a staggering indebtedness which they did not incur but which they will be required to pay (not heirlooms but chains)."



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Gives You the *Right Truck* for each job

• THE TRUCK OF VALUE •

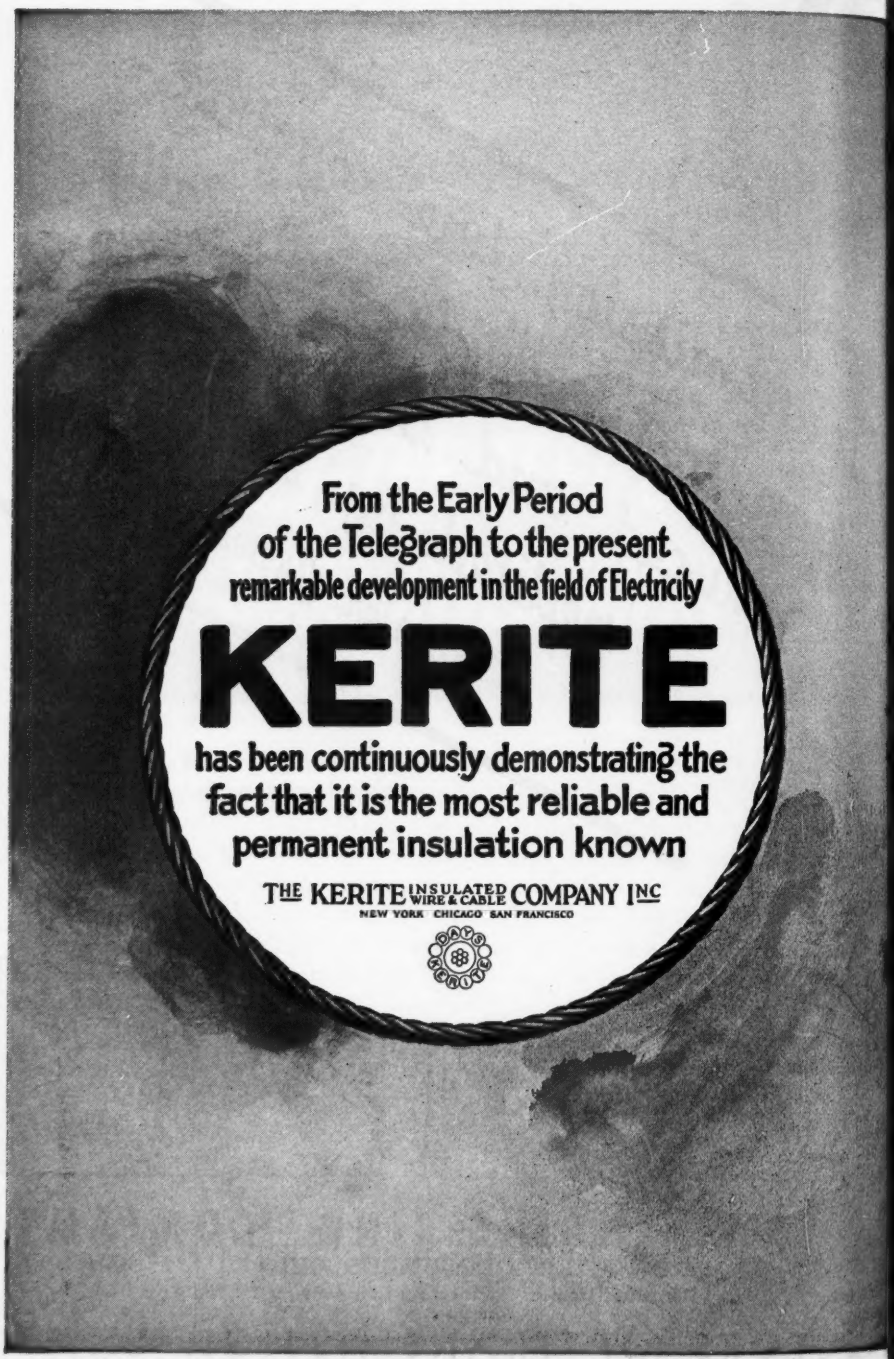
Standardization on GMCs CAN SAVE YOU MONEY

GMC trucks give you the most usable power, best performance, longest fuel mileage. But there's another big reason why fleet owners are finding it profitable to standardize on GMCs for every hauling job. Service and maintenance operations are greatly simplified when all trucks in your fleet are GMCs. Parts inventories can be reduced. You save on jigs and special tools. Let GMC help you cut truck expense to the bone.

Most Complete Line in the Industry!	
½-ton	Chassis, Panels, Pickups, Stakes, Suburbans
¾-ton	Chassis, Panels, Pickups, Stakes
1—1¼-ton	Chassis, Panels, Pickups, Stakes, Cab-Over-Engine
1½—2-ton	Chassis, Panels, Pickups, Stakes, Cab-Over-Engine
2-ton	Conventional and Cab-Over-Engine Models
2½-ton	Conventional and Cab-Over-Engine Models
3½-ton	Gasoline and Diesel, Conventional or Cab-Over-Engine
4-ton	Gasoline, Conventional or Cab-Over-Engine
5-ton	Gasoline and Diesel, Conventional or Cab-Over-Engine
6-ton	Gasoline and Diesel, Conventional or Cab-Over-Engine
7-ton	Gasoline and Diesel, Conventional or Cab-Over-Engine
8-ton	Gasoline and Diesel, Conventional or Cab-Over-Engine
Super-Duty Trucks up to 15-tons Capacity	

Our own YMAC Time Payment Plan assures you of lowest available rates

GMC TRUCKS TRAILERS - DIESELS



You're All Set! *with* "CLEVELANDS"

DIG

"Anywhere Any time

WATCH YOUR COSTS GO DOWN

A BALANCED, correct engineered combination of wh is needed, "Clevelands" pr duce more "performance pe pound" — pay for themselve quicker because of the additional savings they make for you.

You have a machine that fits into "more jobs"; may even, because of a singl exclusive feature "pay out" on one job.

You have equipment that you can move to and from the job, faster with less ex pense and bother.

You are relieved of the high maintenance cost of obsolete equipment.

Because of "Clevelands" dependability you can rely on steady, daily output, a lowing you to plan your work better and get more efficiency from your gang.

You save money on "Clevelands" speed and ability to "cut the buck" on toug jobs.

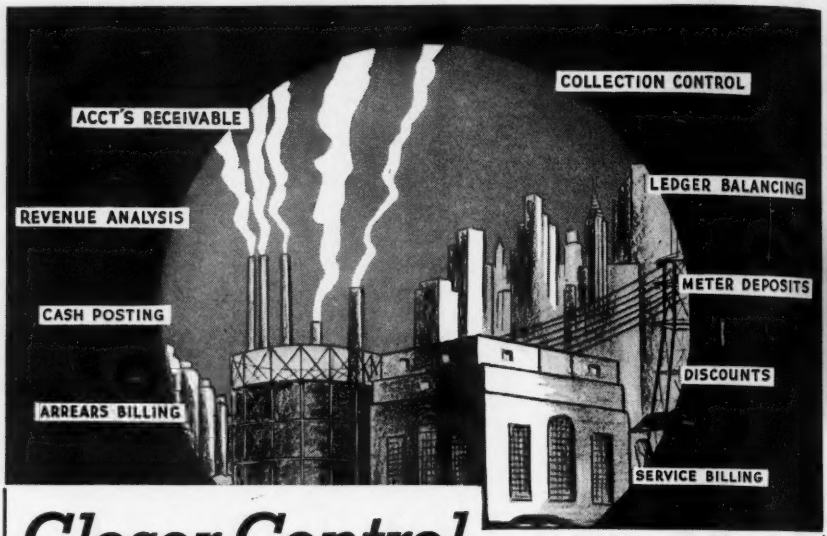
THE CLEVELAND TRENCHER COMPANY

"Pioneer of the Small Trencher"

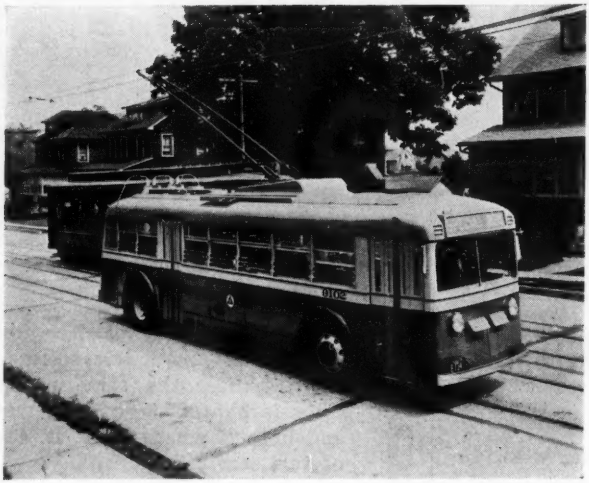
20100 St. Clair Ave. Cleveland, Ohio

Another important way "Clevelands" save for you is by low cost transportation via special trailer—"Clevelands" load and unload in 10 to 15 minutes.

CLEVELANDS



Trolley Coaches Broaden Public Transportation Service. In addition to serving urban shopping and business sections, in many cases they offer "feeder-lines", connecting the street car rails with:



- Suburban Towns
- Parks
- Beaches
- Stadiums
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Well-lighted, eye-level car card racks increase the value of Transportation Advertising Space.

Smooth, swift get-away, spacious interiors and comfortable seating put the riding public at ease, ready to receive the favorable influence of Transportation Advertising.

BARRON G. COLLIER, INC.

745 FIFTH AVENUE, NEW YORK

Ready

to Convert Present Systems into DIVERSION-PROOF C-B *Indoor Installations*

The same security against current diversion effected by C-B outdoor service entrance equipment can be extended to all indoor installations without change in present systems.

Existing equipment may be retained; initial cost of the C-B meter enclosure is low; installation is quick, time- and labor-saving; maintenance costs are sharply reduced; complete protection against current diversion is provided. Consult C-B engineers without cost or obligation on any service entrance equipment problem.

Copies of Bulletins **57, 60, 61, 62** *and* **63** *on request*

Electrical Department

CORCORAN-BROWN LAMP DIVISION

THE ELECTRIC AUTO-LITE COMPANY

4900 Spring Grove Avenue Cincinnati, Ohio

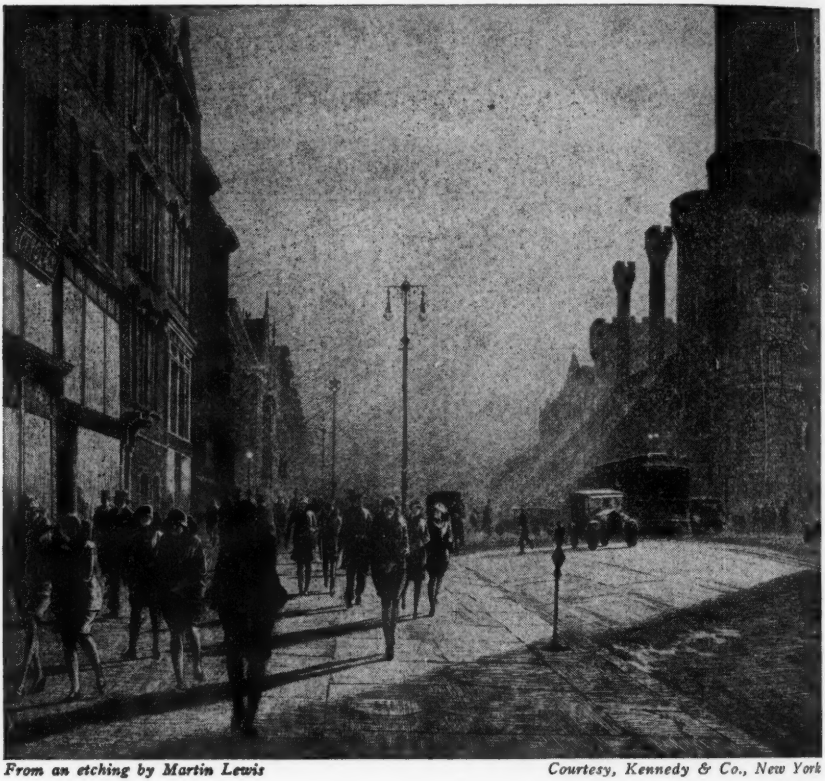
Utilities Almanack

NOVEMBER

23	Th	¶ *Petroleum Electric Power Club will convene for eleventh annual conference, Houston, Tex., December 14, 15, 1939.*
24	F	¶ *Tax Policy League will hold convention, Philadelphia, Pa., Dec. 27–29, 1939.*
25	Sa	¶ *American Society of Civil Engineers, Arizona Section, opens meeting, Phoenix, Ariz., 1939.*
26	S	¶ *American Institute of Electrical Engineers will hold winter convention, New York, N. Y., Jan. 22–26, 1940.*
27	M	¶ *American Society of Heating and Ventilating Engineers will hold meeting and exposition, Cleveland, Ohio, Jan. 22–26, 1940.*
28	Tu	¶ *National Public Housing Conference will convene, Washington, D. C., Jan. 26–28, 1940.*
29	W	¶ *American Road Builders' Association will convene, Chicago, Ill., week of Jan. 29, 1940.*
30	Th	¶ *Southern Gas Association will hold annual convention, Hot Springs, Ark., Feb. 12–14, 1940.*

DECEMBER

1	F	¶ *American Water Works Association, Canadian Section, will hold convention, March 27–29, 1940.*
2	Sa	¶ *American Water Works Association, Kentucky-Tennessee Section, will hold meeting, Lexington, Ky., Apr. 8–10, 1940.*
3	S	¶ *Nebraska Telephone Association will hold convention, Kearney, Neb., Apr. 9, 10, 1940.*
4	M	¶ *American Society of Mechanical Engineers starts meeting, Philadelphia, Pa., 1939.* ¶ *National Industrial Council convenes, New York, N. Y., 1939.*
5	Tu	¶ *American Water Works Association will hold annual convention, Kansas City, Mo., Apr. 21–25, 1940.*
6	W	¶ *National Association of Housing Officials opens session, New Orleans, La., 1939.*



From an etching by Martin Lewis *Courtesy, Kennedy & Co., New York*

Saturday's Children

Public Utilities

FORTNIGHTLY

VOL. XXIV; NO. 11 NOVEMBER 23, 1939

Where Will the Tax Collector Turn for More Revenue?

The author thinks that the customers of the privately owned utilities, like the consumers of gasoline, will be looked upon as an easy source for the supply of funds more and more demanded for pensions and for relief and welfare work, especially in view of the elimination of the customers of publicly owned utilities as a source of tax revenue.

BY T. N. SANDIFER

THE troubled state of affairs abroad, temporarily at least, serves to eclipse a number of domestic economic problems. Some of these may even be partially solved by the sudden turn of events—such as our nearly chronic problem of surplus commodity stocks. But others are merely postponed and may even be aggravated by this lack of public attention.

In the second category would certainly seem to fall the problem of financing the various state welfare plans which are still being vigorously promoted by the old-age pension crowd and other special groups, notwithstanding the recent resounding defeats administered by the California and Ohio electorates to the "ham-and-eggs" and Bigelow plans, respectively. Such commitments must be paid from tax re-

ceipts; and when these tax receipts prove to be insufficient for the added load, it does not take much of a prophet to forecast that the utilities may find themselves in one of the first conscription classes for the provision of additional government revenue.

The recent gains made by public ownership in utility fields (both Federal and local) are an aggravating complication. It surely has become clear, even to the casual newspaper reader now, that every time public ownership displaces private utility operation, that much more valuable taxable property is wiped off the tax rolls. Obviously, this means that additional tax burdens will have to be shared by a reduced number of taxpayers. And we have already witnessed attempts to recapture such valuable prizes as the TVA and other Federal and local publicly operated utility ventures by the encroaching hand of the tax collector.

But, to come back to public welfare plans. The recent surge behind state programs of old-age benefits and associated welfare plans, financed partly with Federal funds and partly with state or local money, has already reacted directly on utility enterprises. That it will continue in that direction is indicated in a recent summary of the situation by the Social Security Board.

This summary pointed out that in the approximate decade of relief expenditures ending (for calendar purposes) December, 1938, assistance for the first four years came entirely from state, local, and private funds, with roughly three-fourths supplied from state and local sources.

At a comparatively early stage in the depression, in the early 1930's, depression-struck state and county governments were already at their wits' ends for sources of revenue to meet the mounting public burden of relief. Virtually no state in the Union, and few, if any, county governments, but felt the pinch of defaulted taxes on real estate in urban centers, and the hopelessly bankrupt condition of rural areas. Collections from other sources, income and business operations, were not much more productive.

At this stage the Federal relief machinery, under its sequence of initials, entered the picture. The major burden was then assumed by the Federal Treasury, but was contingent, in nearly every case, on the state assuming a proportionate share of the load. This situation, in its varying evolutions, has continued, and is today, perhaps, the major corollary problem of taxation.

For, during this period of evolution, there has become firmly entrenched the idea of Federal-state old-age and kindred welfare plans. From August, 1935, when the Social Security Act was passed, in addition to tremendous increases in numbers of beneficiaries of other classes, there has been, according to this agency, a fivefold increase in old-age assistance. Roughly two years later, or in 1937, the SSB was able to report that aggregate state and local expenditures for payments under one or another such plans had jumped from approximately $7,500,000, to $14,000,000 per month.

Even by 1937, the report for that year by SSB said:

> In states whose public assistance programs are financed jointly by the state and its political subdivisions, the problems of local finance have sometimes been severe.

THE tax on real and personal property was, at that stage, the principal source of revenue for this purpose. The reference to nationally approved public assistance programs is not critical, but merely to point to the present trend. State resources have improved in many cases, but so, in many cases, have the state programs changed.

Today the amounts paid monthly to old-age beneficiaries range from $6.13 in Arkansas, to $32.44 in California, but virtually all states have some form of Federal-state program in which the Federal contribution is limited to $15 per month per person, on a matching basis. More and more, however, there is pressure in the states for the payment of the full amount of approximately $30.

This is the reason why, in the words of a tax economist consulted by the writer, harassed state and county officials are ready to slap taxes on anything still left to tax, and are combing their states for new sources of revenue. They have gasoline taxes, sales taxes, liquor taxes, and punitive taxes of various types, and yet, on the horizon is the making of demands for still more.

At the same time the general tax structure has radically altered. Twenty-five years ago, as the Federation of Tax Administrators recently reported, general property taxes produced 51 per cent of all state revenue. Today less than 8 per cent comes from this source.

Here is where officials and the public are beginning to look at the potential revenue to be derived from further taxation of their remaining privately owned utility systems and, in a number of instances, to initiate new tax proposals for such revenue.

A CONCRETE indication of the trend was in the plan of certain state legislators of Arkansas to levy taxes on natural gas distributing companies operating in that state. The idea was to use the revenue from such a tax to match Federal grants toward a $30 per month pension for indigent aged.

Persons in Arkansas entitled to old-age benefits from the state welfare department have been receiving about $6 per month each. The Federal government will contribute up to $15 per month each for old-age pensions provided the state will match this amount.

Enactment of the Arkansas plan, it was estimated, would yield between $3,000,000 and $4,000,000 annually. The tax rate was calculated to hit companies charging more than 45 cents per thousand cubic feet of gas at re-

¶ "THE *six projects upon which the Tennessee Valley Authority is now nearing completion of land acquisitions, for instance, affect the finances of Alabama, Tennessee, and Mississippi. North Carolina is involved in the property transfer but has no state tangible property tax. In addition, the removal of this area of land, formerly subject to tax, to tax-exempt status, because federally owned, involves twenty-two counties and seven small incorporated municipalities.*"

tail. Clauses in the enacting measure would have barred any assessment by the companies on the consumer, based on the increase. This proposal was defeated in the Arkansas senate only after a considerable battle in the closing hours of the recent session.

In the same state, additional proposals were attempted for increasing severance taxes on production of minerals within state bounds, thus confirming, in this case at least, the economist-prophet previously quoted. These Arkansas utilities' tax proposals may be dead or only sleeping. But they provide an interesting pattern. They are based on a certain punitive premise (as seen in the plan to tax rates above a given figure). They are calculated to limit charges that may be made by a distributing company on the consumer.

The tax, in this instance, would be levied against Texas and Louisiana gas piped into Arkansas from these producing areas. Meanwhile, Texas legislators were considering recommendations involving, among other matters, a 25 per cent increase in taxes on natural resources, designed, altogether, to return a total of $33,000,000 annually, to be used in meeting old-age pension requirements as suggested by Governor Lee O'Daniel. The latter's unique campaign will be easily recalled.

THE utility tax proposal was not Governor O'Daniel's, but, rather, a counter to his own recommendations, on the part of Texas legislators. However, the basic requirement arises from the plan to provide a $30 per month old-age pension, with the state and Federal treasuries matching funds.

Taxes under this proposal would have included:

On every sale of electric energy, natural or artificial gas, except for industrial purposes, one cent on each 40 cents or fractional part of the sale price; on sales of service to telephone subscribers, one cent per each 40 cents sale price; on natural gas, ¾ of one per cent.

Once more these utility taxes were defeated in the Texas legislature, but can the fort be held indefinitely against increasing pressure?

This exposes another aspect of the growing utility-tax problem involved in the various relief and welfare obligations now being assumed throughout the nation. The Louisiana and Texas companies serving Arkansas would be taxed in Arkansas, and also in Texas. So far, Louisiana has followed a policy of encouragement of its natural gas industry, that state having one of the world's major producing areas.

Louisiana's old-age assistance contribution is at present financed by taxes on luxuries to provide state funds, and special amusement taxes and gasoline taxes to provide local funds. Arkansas has previously derived funds for this purpose from taxes on retail sales, alcoholic liquors, slot machines, pool tables, prizes, and horse and dog racing. Those of Texas have followed the same general lines.

Wyoming's state share of the fund is appropriated from taxes on carriers, telephone and telegraph services, public utilities, electric, heat, and gas services, in addition to sales and other levies on various transactions and properties.

HERE, then, are concrete indices to the movement. At the last ses-

Taxation of Utilities

"THERE are probably no states whose taxable wealth is so low that they do not have the modern facilities of public utilities. The ease and economy with which utility taxes can be collected is another tempting factor. Where these have not been already drawn upon, . . . there is manifest an increasing disposition to levy all that these companies can be expected to bear, in the effort to meet the ever-mounting state costs."

sion of Congress the SSB included in its recommendations one for a change in the present system of uniform percentage grants to states, whereby the percentage of Federal grant could be varied to meet the relative economic capacity of each state. A similar change was defeated in Congress only after a furious fight in a conference committee.

The effect of such change might be expected to work for reduction of pressure on state tax resources, but not necessarily. There were instances, recalled by the writer from the days of FERA, when the then administrator, Harry Hopkins, for instance, on occasion felt that states were not exerting full pressure on taxable sources. Relief aid from the Federal Treasury was withheld more than once until a recalcitrant state legislature found the necessary state funds.

Referring to the 1937 SSB report again, one finds acknowledgment, even then, of a dearth of state tax sources, and a suggestion that states might find it necessary in the near future to overhaul their tax structures.

As shown in the random cases cited, this overhauling of late has tended to catch the private-management utility systems of the states concerned. And it has, incidentally, revealed to municipalities, states, and other taxing agencies, the potentialities in any wholesale removal from their books of existing utilities, by transfer to Federal or other public ownership.

THE six projects upon which the Tennessee Valley Authority is now nearing completion of land acquisitions, for instance, affect the finances of Alabama, Tennessee, and Mississippi. North Carolina is involved in the property transfer but has no state tangible property tax. In addition, the removal of this area of land, formerly subject to tax, to tax-exempt status, because federally owned, involves twenty-two counties and seven small incorporated municipalities.

The TVA maintains that "only three of the municipalities show noteworthy financial modification." It also points out that this is only a phase of the question, citing enhancement benefits believed to be inherent in the TVA program.

The TVA calls attention, also, to

the fact that coöperative associations pay to the states, counties, or cities in which they operate, all the taxes which are paid by any private membership corporation or coöperative organization.

Under this plan the electricity department of each municipality pays into the general fund of the city a tax equivalent, determined by applying prevailing ad valorem tax rates to the full present value of the system.

This agency further recalls that, under § 13 of the TVA Act, there is required the payment of 5 per cent of the gross revenue from sale of hydroelectric power to the states of Alabama and Tennessee.

The losses to municipalities, reported by TVA itself, are: Dayton, Tenn., 5.5 per cent; Murphy, N. C., 2.5 per cent; Guntersville, Ala., 0.3 per cent. There is a respective percentage reduction in city assessments of 9.3, 4.0, and 2.4 per cents.

Claiming that the proportionate reduction in every case is less than the assessed value and, further, that reduction in population incident to the shifts, where they occur, may be offset by reduced demand for public services, the TVA states its case.

THIS phase of the matter has been treated more extensively in other articles, but is referred to here because, while TVA sees little significance in the argument, certain communities apparently do not share this attitude. Signs already are pointing to what may happen as the anticipated pressure for state and local revenues increases. This increase is largely from the growing public interest in welfare programs.

At this writing the Georgia legislature had enacted two house bills demanding that TVA pay the same school, state, and county taxes formerly paid by the privately owned utilities from which it purchased dams, plants, and other properties.

By the estimate of amounts to be realized, and by deduction, the legislators' appraisal of their potential loss through TVA, unless the taxes are paid, is $73,740 annually accruing to state and counties.

Representative R. T. Stiles, of Fannin county, Georgia, supported the bills with the information that "The Tennessee Power Company, which is negotiating sales of its properties to the TVA, had been paying approximately 50 per cent of all the taxes in my county." And, further, that it had paid 75 per cent of the support of one high school and a similar high proportion of the support of another high school in his district.

"If we lose all those taxes it will ruin us. We'll have to move out," he declared. His argument suggests a new difficulty confronting state and local tax authorities; many of his county's residents are small home-owners, and the homestead tax exemption left the county authorities with only about $4,000,000 valuation for taxation, of which approximately half was represented in power company holdings. It is reasonable to assume other localities are equally dependent on their utility companies for revenue.

However, the Georgia legislature did actually adopt this bill taxing TVA, and its action was based on frantic appeals from northwestern counties of the state, that they were in a desperate financial plight due to

TVA acquisition of private utility properties which formerly bore a heavy share of the local tax burdens.

TRACING this problem facing the states, there is, then, the argument that local utilities, under private management, have paid substantial shares of taxes in their communities and, where still operating, may anticipate paying more, according to the present outlook. This likelihood is enhanced by the removal to tax-exempt Federal status of other utilities, and the loss of additional sources of revenue through fluctuating local or national economic conditions.

Yet, the forces that demand an increasing tax in virtually all communities are increasing. Once before, during the early history of relief in the depression, the states felt the impact of the full relief load as it was temporarily thrust upon them by the Federal government. Granting that conditions have improved, the prospect of a repetition of this move finds the states, in virtually every case, scratching bottom for revenues to meet the various welfare programs enacted in recent years, and now just getting into full swing.

Thus, there will be posed the question of relative merit, at least for revenue purposes, of public and private ownership of utilities, perhaps the corollary one of reciprocal state-Federal taxation of public properties and funds, and, should certain conditions materialize on a large scale, as they have in the isolated instances cited, of what the states are to do.

It is evident that the pressure for benefits will increase. These programs will stabilize and have, to some extent, already done so.

"It is clear," says a recent bulletin of SSB, "that the public assistance program, under the Social Security Act, forms an integral part of the general public relief program of the nation and, as such, plays an important part"—, a part, the report noted, that in 1937-38 involved payment of obligations totaling two and a half billion dollars, approximately, exclusive of administrative costs, from public funds, for persons in need, in the continental United States, in one relief category or another.

THE SSB experts have repeatedly called attention to the existence of states with low-taxation resources, or states that have virtually exhausted all usual sources of taxation, poll tax,

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sales, property taxes, gas, etc., and must search for new revenue, and realization of a widespread situation in this respect is becoming general.

This is where the test will come. There are probably no states whose taxable wealth is so low that they do not have the modern facilities of public utilities. The ease and economy with which utility taxes can be collected is another tempting factor. Where these have not been already drawn upon, as in the case of states mentioned, there is manifest an increasing disposition to levy all that these companies can be expected to bear, in the effort to meet the ever-mounting state costs.

Should relief be thrust back on communities, it would apparently be absorbed under one or another heading of the Federal-state programs now getting under way, thus necessitating no separate funds, it may be assumed, but greatly adding to the demand for money to meet the additional loads on the existing welfare schedules.

THE principal state tax sources in 1937, the Federation of Tax Administrators found, were: Motor fuel, 29 per cent; sales taxes on tobacco, liquor, and general sales, 20 per cent; business and license taxes, 12.1 per cent; payroll, vehicles, inheritance taxes in lesser proportion, and general property taxes, 7.8 per cent.

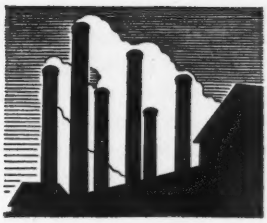
This list obviously covers the normal field for the state collector. This leaves him the problem of finding new taxes.

Already utility taxes in Alabama have been earmarked for the upkeep of the public school system. Already so-called "emergency" taxes on utilities in the state of New York, especially in New York city, are levied by statute expressly for the purpose of taking care of the unemployment and public relief problems, resulting from the recent depression. Unless these signs are very deceiving, the conclusion is inescapable that the tax collector, in his search for new fields to conquer, is turning his gaze more and more in the direction of public utilities, or, in other words, upon the consumers of public utility service, since higher taxes must ultimately mean higher rates for the service.

Oil and Gas Regulation

"WE propose that a Federal Oil Conservation Board or commission should be created within the appropriate government department to administer the Federal interest in the oil and gas industry and to make necessary rules and regulations concerning the production of and commerce in oil and gas. It should have the authority to require that oil and gas be extracted by such methods as are adequate to avoid waste and to protect the interest of all producers drawing from a common reservoir."

—RECOMMENDATION,
Report of National Resources Committee.



"That's a Mighty Good Company to Work For!"

"Where do ya work-a, John?" is an eternal subject of discussion. And a utility company's jobs, and its treatment of employees, have a natural human interest appeal in public relations. What to tell, and how to tell it.

By JAMES H. COLLINS

WHEREVER people gather, they discuss jobs. How long will the war last? Who will run in 1940? These topics are debated, but not so earnestly as the job, which is something personal, immediate, real, eternal.

Even in the higher brackets, with tact and indirection, salaried men and their wives manage to guess at the size of pay checks, and compare the desirability and security of executive positions, job against job.

During the last war, a Broadway manager frequently gave me a box for his show, and my wife and I would recruit service men to fill it.

Often, the soldier and sailor had no time to waste on a show—tomorrow they must sail, and here was perhaps the one chance in their young lives to see New York. Again, they would turn their backs on the stage, and discuss the different services, and what their friends were doing in this here war.

One night we heard a sailor quizzing a soldier.

"Does he get real money for that?" asked the gob. "Or is he just paid by the government?"

The aim is to discover who has the best job, and when all points have been checked, that determines the social standing of the job holder.

It isn't entirely the pay check that decides whether a family is north or south of the car tracks. The kind of employer, the length of service, the record of promotion, and similar factors take precedence.

PUBLIC service companies rank below industrial concerns in average pay, because they employ less highly skilled labor. Yet, in the eternal rating of jobs that is always going on wherever there are job holders, the utilities stand well for stability. It is not always the largest business concerns, either, that have good ratings.

Some of the smaller, personally managed enterprises may be at the top of the list.

In building the Great Pyramid, Cheops worked a hundred thousand men at a shift, four shifts a year, for twenty years, and left a record of his costs in onions, garlic, and radishes.

Herodotus estimated this at $75,000 a year, our money, which, divided among the men, was less than 20 cents per man for three months' work. Certainly not much money, and it was paid in produce.

Nobody employed on the Great Pyramid was likely to rate his job by money, and still, as some worked in the quarries, others in transportation, others in construction, and so on, there was probably just as keen comparison of jobs.

So this question, "Where do you work?" dates back nearly five thousand years, and the wealth of pictures of people working, on the Egyptian temple walls, indicates how basic it was.

Since jobs became scarce, with the coming of the lean years, the discussion has been intensified, with any job that stood up since 1929 something to be prized above rubies.

THIS universal interest in The Job, your job, my job, his and her jobs, gives a basis for some effective public relations work.

The topic is live.

When an editor considers an article, he asks himself, "How many people are interested in this subject?"

If it is about sex, sports, food, money, the wonders of science, it is live.

If it is about first editions, old silver, education, housemaids' knee, or the wonders of accounting, the audience is limited.

For example—education. One-fifth of the population is going to school, and two-fifths more should be interested as parents. Yet, whether readers get enough school when they go to school, or the subject is inherently dry, education ranks low as a topic.

Which is something useful to know, because teachers have done much for business, coming in with special training for special work, and classifying employees by various tests. An executive might choose to tell the public about his results, only to discover that they would rather hear about something else.

A teachers' association passed a resolution condemning an editor for publishing so much about prize fights, and so little about the public schools, and he went to a meeting to speak for himself.

"Ladies, imagine that in this room on my right I have the presidents of the twelve largest colleges, and you can meet any one of them, or all. In the room on my left, I have Joe Louis—now which would you want to see?"

And so the teachers got out of his hair.

THE utility job is interesting to a wide public, because all but a negligible fraction of that public uses gas, electricity, telephone, and other services.

On the other hand, the public seldom comes in contact with utility people. Occasionally, the meter reader is seen, the information operator gives an unlisted telephone number, the trouble shooter comes when he is

called, and maybe talks a few minutes.

"Don't you realize, ma'am," said a telephone trouble shooter, "that when you leave your hook off the receiver, it puts all the phones on this party line out of service? And think of the cost, having me come way out here; this is now the fourth time."

"Well, I'm sure the company makes enough money!" was the response, and that is the general attitude. Customers do not know how many people are needed to render service. The outstanding fact about it is the monthly bill.

The logical place to begin telling the public about utility jobs seems to be with the variety and number of workers needed to give service.

And the logical time, when unusual conditions bring utilities into the news.

JANUARY 9, 1937, was a very cold day in southern California, the high spot in a cold month.

On that day, the largest gas distributor was called upon for nearly 168,000,000 cubic feet, compared with less than 25,000,000 feet on July 19th the previous year. Stand-by facilities were all pressed into service; and to meet the needs of household and commercial customers, industrial service was shut off to the extent of 140,000,000 feet.

Such an emergency is a "natural" for publishing information, either as news or in paid statements, about the number of people employed in giving service, and the ways in which both people and plant are organized to meet the unexpected.

During the following summer, the gas companies spent several million dollars installing additional mains to meet such peaks, both for bringing the gas in from the oil fields, and for increased service through street mains.

Another "natural."

Disasters like the New England hurricane, disrupting utility services, furnish opportunities for statements, not only about emergency rebuilding operations, and the loyalty and efficiency of employees to the public, but also bring into the limelight that item in balance sheets which is so often discovered and criticized by the amateur economist, and people in position to do something about it politically.

That is the corporation's surplus, which looms so large in ordinary times, and goes to work unobserved in emergencies, when a plant has to be rebuilt.

WHAT do people use for yardsticks in comparing job with job?

It might be thought that the amount of cold cash in the pay envelope was the principal standard of measurement, but actually job holders have something like "real wages" in

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mind, and go right behind the number of dollars, with questions like these:

What kind of work is it—skilled, clean, safe? If it is dirty or hazardous, what does the company do to ameliorate its drawbacks and protect the employee?

How steady is employment — does an employee get high wages for part of the year, and suffer a lay-off during slack periods, as in the building trades, or does he get a steady year's work, at pay that, while lower on the weekly wage basis, brings him a higher yearly income?

How about employees' personal problems, mostly financial? If a fellow gets into a money jam, and needs $50 for the new baby coming, has the company set up loan facilities, or must he be at the mercy of loan sharks? Suppose a fellow wants to build a house—is there anybody in the company who will advise him?

How about promotions, and education to qualify for higher positions—does the company rate employees' ability by a fair system of records, and does it provide correspondence or other educational facilities?

What sort of an organization socially — where does its baseball or bowling team stand in the local league?

Job holders and the general public have a keen interest in accident prevention, especially motor accident prevention, and records of safety as well as courtesy in driving company trucks and cars are news, and reflect company policies.

In many utility organizations, first-aid training is given employees likely to deal with injuries, and this training often comes into use in unexpected ways. For example, a telephone construction crew, working in a lonely residence neighborhood, heard a boy scream. Playing by himself on a vacant lot, he had fallen and cut an artery on a broken bottle. The foreman of the crew, trained in first-aid, quickly applied a tourniquet while a helper called an ambulance, undoubtedly saving the lad's life, for otherwise he might have bled to death.

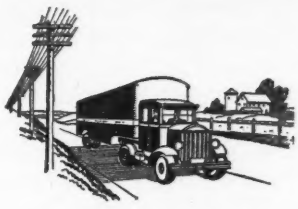
Length of service stands to the public for a steady job and congenial employment, and since the depression brought the startling realization that no job was safe, this factor has become one of the first yardsticks. Many utility companies were forced to reduce wages, and put employees on reduced schedules, but came through with records of no discharges, and no real hardships, though living expenses of employees had to be more skilfully budgeted. Payments on homes and conveniences were successfully met; children kept in school—and these details showing how employees were able to squeeze through the lean years are of direct interest to other people who had to meet the same problems, and not always so successfully.

In an eastern city, some months ago, the steady job was dramatized in an interesting way.

The local chamber of commerce gave a dinner, inviting men and women who had worked for the same concern forty years or more.

One thousand guests attended, with an aggregate of service far exceeding forty thousand years.

One man had worked for the same company sixty-one years, and was still holding a job. A railroad com-



First-aid Training

"JOB holders and the general public have a keen interest in accident prevention, especially motor accident prevention, and records of safety as well as courtesy in driving company trucks and cars are news, and reflect company policies. In many utility organizations, first-aid training is given employees likely to deal with injuries, and this training often comes into use in unexpected ways."

pany seated 103 guests from its local shop and line employees.

Listen to men and women discussing jobs, and you get the idea that wages are the most important yardstick.

"How much do they pay for that kind of work?" Bill asks Jim.

Or Tom hesitates, talking with the personnel manager, in applying for a job, and plumps out the question uppermost in his mind: "About how much could I expect to get to start with?"

Wages loom large in labor disputes when they get into the news.

BUT follow the discussions into the finer points of a job, and you discover that job holders have a keen instinct for the real wages of the economist.

Here are Dick and Sam, both the same age, both with families, both working the same number of years—they compare notes.

Dick has earned more money per day, because he is a skilled mechanic, while Sam is a clerical employee, earning one-quarter less.

But Sam has a home paid for, has sent his oldest boy to college, and weathered depressions and sickness, while Dick lives in a rented house, his oldest boy went to work after high school, and he has been uncomfortably close to relief more than once in hard times.

They chew the rag on that, and decide that their different results are explained by Sam's having a steady job with a company that takes some interest in his personal affairs.

When he bought his house, for instance, everybody in the office was interested, and his manager sent him to the company's attorney as soon as he had settled on a locality and a house. The attorney quickly pointed out defects in the restrictions, and scamping in the street improvements, and advised Sam to look around some more.

When Sam finally did buy a house, the contract was advantageous, the value good, and the seller responsible—later on, people he knew had sad experiences buying the houses that he turned down on the attorney's advice.

Dick himself had such an experience. In his early married years, when work was plentiful, and he earned overtime, he bought a house, and it was a sound purchase as far as restrictions and improvements went.

But nobody advised him on the critical matter of price and instalments; he bought too expensive a home for the ups and downs of his employment, and when one of the smaller depressions came along, was unable to meet his payments, and lost the property—fortunately, before he had paid very much, so the loss could be regarded as a little more than the rent he would have paid anyway for living in a finer house.

EVERY afternoon at 3 o'clock, when two shifts change in the plant of a small manufacturer of my acquaintance, he is accessible to any of his two hundred employees who want to come in and get his opinion on personal affairs.

For half an hour, then, he listens to details of home purchases, instalment conveniences, emergency needs for money, and so on, and if a customer comes during that period, he is asked to wait. This plant has a third shift, coming on at 11 P. M., and one night every week he goes to his office for the same purpose.

Here is Sam, who wants to buy a house, and brings the contract, the plans, and specifications.

"Let me take these papers home and read them," he says. "Maybe our lawyer ought to look them over."

A day or two later, Sam's purchase is approved, even to his ability to meet payments on his wages.

"There's only one thing bothers me now," Sam says. "Can I be sure of holding my job, and getting the same wages, while I'm paying off this mortgage?"

"You're just as sure as I am," is the employer's answer. "This is a competitive business. We hold our own against other manufacturers because we are able to keep our costs down, without sacrificing quality. That depends partly on you, Sam, and as long as your work is good, and we have the right costs and prices, our salesmen can get the orders. If times get tough, we may have to reduce wages, or hours, or lay off some people. That's something beyond our control. But the best people will be last to suffer, and so it depends on you as much as the times."

NEED for emergency money used to be met by wage advances, repaid in small weekly deductions from the pay envelope, but since Federal housing laws introduced new types of loans in banks, the bankers of this community have started making personal loans to employed people on their notes, in amounts as low as $50. So employees are advised to go to a bank, and if a second signer is asked for, the manufacturer puts his name on their notes. Many organizations now have employee credit unions, from which employees who need emergency money can borrow, and others deal with private lenders whose interest charges are reasonable—such lenders can be

found in most communities, and the volume of loans coming from a single concern's employees, with minimum losses, is attractive business for them, and done at minimum costs for investigation and collections.

These things all enter into real wages, and are taken into account in comparing jobs.

Promotion is a yardstick much used in measuring jobs, but it has its limitations.

People like to hear that the general manager rose from water-house clerk, and agree that genius has a chance with a concern that discovers its generals among the rank and file.

STILL, probably five individuals in the lower ranks are ambitious enough to think, work, and study for promotion, while the other ninety-five are content to hold a steady job, and maybe get reasonable increases in pay with years of service. And both the climber and the satisfied job holder are necessary in an organization.

This manufacturer who advises employees about personal affairs has a promotion policy that never fails to intrigue job holders who hear about it.

After three years, any employee can try to qualify for any other job without loss of wages.

The employee works at Job A, which pays $30. Job B pays $40, and he believes that he can qualify for it.

If he started as a learner at Job B, the pay would be $18, and he would need two or three months to prove his ability. That would mean cutting down in his living expenses.

Under the plan, he can have three months as a learner at Job B, at his regular Job A wages, and earn $40 if he qualifies. If he fails, he goes back to the old job, and has lost nothing. If he succeeds, the business has a better man.

Last year, a dozen employees, about 5 per cent, took advantage of this policy. Nine qualified for the better job, and three failed and went back to their old jobs, satisfied that they lacked what it took to win the promotions.

MANY public utility employees have to deal pleasantly with people—customers who are far from pleasant. They resent putting up a money deposit, think their bills are too high, complain about this and that.

Temperament is a factor in handling such customers, and company rules also help.

Some years ago, a railroad company published its rules for dealing with its customers, and discovered that people were genuinely interested in them—indeed, in the fact that that company had any rules, because it had long been criticized for its service.

Newspaper editors commended, par-

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ticularly, the rules for dealing with disgruntled customers, saying what a different world this would be if all public service corporations followed such principles.

Employees were reminded that the railroad business was, to the public, complex and mysterious, and that people did not understand how trains sometimes ran late, or freight went astray.

When they complained, they were usually indignant, and no employee could afford to let himself become involved personally in customers' grievance.

The first thing to do was, get the facts straight. That would give the basis for finding out who was to blame, setting matters right if it was the company, and explaining to the customer if there had been a misunderstanding on his part. Remember, the customer with a complaint, properly taken care of, generally became a good friend of the company.

PEOPLE are interested in jobs — you can bank on that.

And they hear about them, nowadays, a great deal that is bad—sweating, monotony, danger, injury to health, dismissals for no reason, and injustice generally — especially from the political and ideological promoters of discontent, who promise them something better in a new economic set-up.

Therefore, anything *good* about jobs, such as the modern checks and safeguards thrown around employment by practically all large organizations, is in the nature of news.

The promotion of better public relations through this universal human interest is largely a matter of selecting the facts to be presented, and the channels of publication.

The facts should be such as answer the universal popular questions about employment—what kind of treatment do employees get, what chance have they of advancement, to what extent can they rely upon their employer in building a home and raising a family, how are they protected against dismissal at the whim of a straw-boss, what does the employer do for them in their personal difficulties—and, probably last of all, what are they paid?

Such facts can be published in many ways—through paid advertising, pamphlets, news items that reflect the spirit of an organization, talks by officials and by employees themselves, motion pictures, radio discussions, and every other method of reaching the public.

The material should be interesting, naturally. Dry facts and complex charts lack popular appeal. Graphs, stories, personal experiences of individual employees in promotion, meeting emergencies and the like, and even cartoons and comic strips, are the logical language for talking about jobs, because it is the language through which the public gets other information.

In starting such campaigns, the temptation is to tell the whole story at once, and perhaps to argue for the company's employment policies.

The better way is to establish channels through which interesting facts can be presented regularly, and to publish, whenever something interesting occurs, such news as will give people reason to believe that the X Company is a decent concern, liberal in treatment of its employees—a good concern to work for!

How the British Finance Their Public Utilities

The war risk, a burdensome hazard to British utilities not shared by American properties, has not prevented English companies from conservative financing by retiring their relatively smaller bonded indebtedness through sinking-fund arrangements.

By FERGUS J. McDIARMID

On September 27, 1938, London was, I am sure, one of the most depressing places in the world. The sodden gray skies overhead were reflected in the unsmiling and almost haggard faces of the people in the streets who were buying newspapers, digesting them in their tracks, and then hurrying on. Faced with the problem of putting in this last day before sailing in a city where life had rather suddenly become most unpleasant, I was somewhat at a loss as to what to do. My wife solved that problem by setting out to do some last-minute shopping, but I lacked the intestinal fortitude to go along. I could not concentrate on a petty deal with some benumbed slip of a shop girl who had just come in from a gas mask fitting, or bargain over shillings and pence on Tuesday with an old gentleman who had thoughts of being blown to kingdom come on Saturday. Instead, I took the underground to Westminster bridge and, almost in the shadow of the Houses of Parliament, boarded a little steamer for a trip on the Thames.

It was pleasanter out on the river. For one thing, it kept one away from the terrible newspapers which I had been buying at the rate of about two every hour. A more specific reason for taking to the river was to get a good look at the great power stations—the largest in Britain—which supply London with power. They are, of course, all down along the Thames—Battersea station, Barking station, the two Deptford stations, and others. That morning an almost imperceptible haze hovering over the chimneys of these great plants gave to their structures an appearance of tranquillity which was rare in the London of those days. It

took quite a stretch of the imagination, therefore, to realize that these same plants threatened soon to become the most sought-after targets in the world. Only a few days before, up in Scotland, a young clergyman had remarked to me, not quite facetiously, "I must hurry back to London so I won't miss the first bombardment. Since I live near one of the big power stations, I will be sure of a grandstand seat." Apparently the River Thames, which in time of peace is the indispensable friend of these plants, supplying them with condensing water and cheap fuel, could in time of war become their deadly enemy. From the air, on a moonlight night it resembles a silver ribbon leading up from the sea, and provides a perfect guide to everything along its banks.

UNDER such circumstances it was perhaps inexcusable to spare a thought for anything but human values. However, habit is a powerful thing. As a utility analyst, I was made deeply conscious of the fact that the purchaser of the bonds and stocks of American utilities does not yet have to fear that the security behind his investment may become a prime target for enemy bombers. On the other hand, British public utility securities generally appear to contain certain important elements of strength found only rarely in their counterparts on this side of the water.

Your bondholder is usually a most unimaginative fellow. The engineering wonders of a high-pressure turbine or a great transmission line marching over mountains impress him very little. His main concern is with the regular collection of his interest and the return of his principal as and when promised. The idea of having a forced extension of the maturity date of his bonds appeals to him not at all. A careful study of the facts indicates that the British electric utilities in setting up their fixed interest-bearing securities have behaved in such a way that, barring a national catastrophe, their bondholders have a reasonably good chance of seeing their contracts fulfilled to the letter.

IN the first place the ratio of these fixed interest-bearing obligations to total capitalization has been kept at a rather low level. An examination of the capital structures of thirty-four of the largest private electric utilities in Britain reveals that only 29 per cent of their capital takes the form of bonds, while 27 per cent is preferred stock and 44 per cent is common stock. The most usual restriction governing the issuance of bonds by these companies provides that the amount of bonds shall not exceed the amount of their share capital. In practice, however, the amount of bonds is kept well below this level. None of the thirty-four companies studied had bonded debts which exceeded 45 per cent of their capital structures, and in seven cases out of the thirty-four there were no bonds outstanding. It also appears to be the case that the capital structures of British utilities are largely free from inflation, and their property accounts represent very close to the original amounts of money invested in their properties—at least so the writer was informed by a disinterested and very good authority.

Direct comparison on a broad scale as to the relative debt burdens of Brit-

ish and American utilities is difficult, because of the rather widespread practice which has prevailed in this country of inflating capital structures. The nature and extent of such inflation was revealed by the Federal Trade Commission in its study of the property accounts of a large number of utilities. Anyone who has delved into the subject knows that the American-operating utility whose bonded debt does not exceed 29 per cent of a conservatively depreciated value of its property on the basis of original cost is a rarity. Utilities with debts less than 50 per cent of such a valuation are the exception rather than the rule.

AMERICAN utility bond indentures commonly make provision for the issuance of additional bonds up to 70 per cent, and sometimes up to as much as 80 per cent of the value of net additions to property. Too frequently we run into cases where the amount of bonds outstanding seems to approach very closely to the depreciated value which a reasonably conservative appraiser would assign to the property. The fixed interest-bearing securities of such a concern may go by the name of bonds; but they really are a combination of bonds, preferred, and common stock. Another type of case is that of a utility doing both an electric and gas business. The gas business may be going so poorly as to provide very little support for the capital structure, while the value of the electric property alone does not materially exceed the amount of the bonds. In such a case, also, the bondholder appears to be skating on rather thin ice.

This heavy dependence of American utilities on loan or debt capital as compared with equity or ownership capital is an unsatisfactory situation which is not in general being improved. An exception to this statement must be made on behalf of those utilities which are reducing their funded debts by the issuance of serial notes or debentures. Nonetheless, it is well known that the amount of equity capital contributed to the industry in recent years has been negligible. For this a number of factors are responsible. Foremost in the public mind is the attitude of the Federal government and that of its agencies, such as TVA, which have discouraged investment in utility stocks. Such stocks have in recent years tended to sell on a less favorable basis in relation to earnings than have stocks of other industries.

EVEN, however, if this threat were removed, there can be little doubt

MARKET BEHAVIOR OF SIX UTILITY COMMON STOCKS IN RELATION TO PAR VALUE AND EARNINGS

Company	*Stated or Par Value of Common Stock*	*Market Value July 15, 1939*	*Market Times Earnings for Year to Mar. 31, 1939*
A	$100	$145	16.4
B	25	30	12.7
C	38	78	18.7
D	100	118	16.4
E	25	31	12.0
F	25	27	12.4

that holding companies with inflated capital structures and a large amount of preferred dividends in arrears would continue to prevent any flow of equity capital between the investing public and a large section of the electric utility industry. Until much holding company wreckage is cut away, possibly until investors are permitted to invest directly in the common stocks of the operating companies, this section of the industry will have to finance itself entirely through additional bonds or out of earnings. Even at the present time there is good reason to believe that those operating electric companies which have maintained their independence—the list is not long but it is illustrious—could raise capital through the sale of stock.

THE contents of the table on p. 677 lend credence to such a belief. They relate to the market behavior of the common stocks of six large independent operating utilities situated in various parts of the country which are not affected by the threat of public competition. These companies do a business which is either entirely electric or largely so. At the time of writing, their common stocks were in every case selling above the par or balance sheet values of these stocks. They were selling at between 12 and 19 times the earnings of the last completed year. From a perusal of this data there is good reason to believe that any of these companies could raise capital on a favorable basis through the sale of common stock. It should, of course, be borne in mind that these six companies have maintained a relatively low proportion of bonds to total capitalization.

WHEN a company is already bonded up to the hilt, the raising of equity capital on favorable terms would not be such an easy matter. When, in addition to all the securities of the operating companies, layer upon layer of holding company debentures and preferred stock separate the ultimate common stockholder from the property, only those with a decided flare for gambling would care to contribute equity capital to the enterprise through the purchase of common stock of the holding company. In cases where a large amount of inflation and write-ups enters the picture, most gamblers might prefer to stick to horse racing or the rolling of dice.

There is another factor bearing upon this situation which does not relate directly to the utilities themselves. It might be described as a fundamental change in the savings habits of the American people. Capital which would formerly have been directly invested by its owners in equities and new enterprises now flows into the hands of life insurance companies and other financial institutions. The invested assets of American life insurance companies have increased over 62 per cent since 1929, or at the rate of over one billion dollars a year, in spite of a marked contraction in the field for private investment during that period. Risk capital has been replaced on a broad scale by trust funds to which safety is the primary consideration. The investment of such institutionalized savings is severely hedged about by the nature of the savings themselves as well as by legal restrictions. For example, no life insurance company domiciled in New York may invest in common stocks. Because of the nature

Sinking Fund for Bondholders

"If more American utilities were willing to provide their bondholders with the elementary protection of a sinking fund, they would be in a much better position to claim the right to earn an average of 6 per cent or better on their entire investment while paying an interest rate of 3½ per cent or less on a large part, often the majority, of their capital. Until they do so, any solicitude which they may express on behalf of their bondholders must be taken with a grain of salt."

of their liabilities, such companies are compelled to invest very largely in fixed interest-bearing securities. A large proportion of the utility bonds issued during the past decade has been purchased by such financial institutions which have to buy bonds in large quantities whether they want to or not.

It is no secret that the attitude of the larger life insurance companies toward a new issue of utility bonds practically determines the success or failure of the issue. Also there can be no doubt that the extreme ease with which utilities can sell bonds largely to institutions at the very low prevailing rates of interest tends to discourage any tendency which might otherwise exist toward raising money through the sale of equities.

In Britain, the financial institutions are not such a powerful factor in the investment field, and the individual investor still plays the dominant rôle. Moreover, British institutional investors, such as life insurance companies, are not largely restricted by law to the purchase of bonds and mortgages, as is the case in America. This may help to explain why it has been possible for British utilities to be financed so largely on an equity basis. There, too, the government attitude has not tended to dry up the springs of equity capital for the utilities. Holding companies in Britain, while they have existed, have not been a dominating factor in utility finance, and they have not gotten their financial houses into such a condition as to block the flow of equity capital into the industry.

There still survive in England many quaint old customs which either were never transplanted to America or have, in the course of time, become extinct here. Among these may be listed Swan Upping on the Thames and the insertion of rigid sinking-fund provisions in utility bonds. Such sinking funds as are provided really do reduce the bond issues

to which they are attached. There is nothing better calculated to reassure a bondholder than to watch the bond issue, of which he owns a part, steadily decreasing in size year after year. From the analysis of a long list of British electric utility bonds, it becomes apparent that the most usual provision for debt retirement is a 1 per cent cumulative sinking fund. Under such a provision an amount equal to 1 per cent of the original bond issue is used annually to purchase bonds, which bonds are kept alive in the sinking fund and the interest thereon used to retire additional bonds. Such a sinking fund working on a 30-year 3½ per cent bond issue would reduce the outstanding principal by 52 per cent prior to its maturity. If the interest rate were 5 per cent instead of 3½ per cent, a 1 per cent cumulative sinking fund would reduce the debt by 66 per cent in thirty years. On rare occasions the annual sinking fund provided with British electric bond issues drops below 1 per cent, and sometimes it rises above that amount. Rather frequently it provides for complete retirement of the issue by maturity.

THIS is all in sharp contrast to the situation prevailing in America where fixed sinking-fund provisions in utility bonds are a rarity. Have you ever scanned a list of American utility bonds and wondered how much of the debt represented therein would ever be repaid? If you have ever indulged in such a melancholy train of thought, you will understand what a fine and noble gesture it would be if more American utilities, in refunding their 6 per cent, 5 per cent, or 4½ per cent bonds into 3¾'s, 3½'s, or even 3's, would say, "Look here, we are saving 1½ per cent on our interest charges, so let us use 1 per cent of these savings to set up a cumulative sinking fund and cut this bond issue in two over the next thirty years. Our bondholders are taking a heavy cut in interest, so let us make their position more secure. Maybe we won't be earning so much later on and it will be a prudent thing to get some of this debt out of the way while we can."

If more American utilities were willing to provide their bondholders with the elementary protection of a sinking fund, they would be in a much better position to claim the right to earn an average of 6 per cent or better on their entire investment while paying an interest rate of 3½ per cent or less on a large part, often the majority, of their capital. Until they do so, any solicitude which they may express on behalf of their bondholders must be taken with a grain of salt.

A RATHER common provision in connection with recent utility bond issues calls for the spending of a certain amount annually on either net additions to property or the retirement of bonds. This is a step in the right direction in that it tends to increase the ratio of property to bonds. This, at least, is true providing the utility is diligent in retiring old property so that what is really in the nature of a replacement is not counted as a net addition. Also, a cynic might remark that such a clause may be taken to mean that only when the company's engineers cannot think of any new and intriguing gadgets to add to the property, the utility will get around to retiring debt. As a practical matter it has been

noted that the inclusion of such so-called sinking-fund provisions in utility bond issues does not usually result in the paring down of such issues under present conditions in the industry. They do not, therefore, give assurance that a given bond issue will be gotten out of the way within some foreseeable future.

Not unconnected with the matter of debt retirement is the subject of depreciation. Money for the retirement of bonds can, in the long run, only be derived from earnings left in the business, either in the form of a specific allowance to cover accruing depreciation or as contributions to surplus. To the investor in an industry with a large fixed investment a sufficient allowance for depreciation is, over a period of time, a matter of supreme importance. Not only must it provide for deterioration and obsolescence in the physical equipment, but it should provide the investor with some hedge against declining profitability in the industry. In other words, adequate depreciation should make some provision for the retirement of capital, particularly fixed interest-bearing capital.

In a study recently published by the Securities and Exchange Commission, the scale on which depreciation is being currently provided for by American utilities is set forth. In the case of integrated electric utilities generating their power by steam, those companies which set the pace in this matter appear to charge for annual depreciation an amount equivalent to between 2.5 per cent and 2.7 per cent of their plant accounts. The practice of a large proportion of such companies drops considerably below the standards thus set. In the case of companies owning a lot of hydroelectric generating property, the annual charge for depreciation is justifiably lower. A study of the financial statements of a representative list of large British steam electric utilities reveals annual depreciation charges varying from 2.9 per cent up to 4.8 per cent of their plant accounts and averaging 3.8 per cent. These comparisons are presented for what they are worth. Maybe utility properties last longer over on this side owing to the climate or something. Could it be that the obligation to retire bonds through sinking funds results in more generous provision for depreciation on the part of the British companies?

From observing the reactions of a finance committee over a period of years, it becomes clear that there is nothing so calculated to freeze the initiative of even the seasoned utility investor as the threat of direct compe-

¶ "It *is no secret that the attitude of the larger life insurance companies toward a new issue of utility bonds practically determines the success or failure of the issue. Also there can be no doubt that the extreme ease with which utilities can sell bonds largely to institutions at the very low prevailing rates of interest tends to discourage any tendency which might otherwise exist toward raising money through the sale of equities.*"

tition by public authorities. So pronounced is the fear thus engendered that the presence of a small and semi-dormant municipally owned power plant tucked away up a side street in the territory of a utility will cause many investors to shy away from an otherwise sound situation, just as a skittish horse might shy away from a tramp asleep in a ditch. It fully explains why high coupon bonds of utilities in the TVA area and in the Pacific Northwest have sold for years at substantial discounts, while bonds of no greater intrinsic worth, and bearing low coupons, have been soaring in price. Such fears are not without a substantial background.

EVEN a cursory study of the laws and franchise situations, relating to the operation of private utilities in this country, engenders the conviction that in many jurisdictions the legal foundations on which utilities must base their operations provide rather shaky props on which to rest the issuance of long-term securities. In many states exclusive franchises cannot be granted. This means that the utility may be subjected to tax-free public competition any time that some slick salesman of electrical equipment is able to persuade the city fathers that they ought to be in the power business. In case a municipality or other public body desires to buy out a private utility property, the terms on which it may be privileged to do so are not always defined in advance. The investor sometimes has no assurance that the distribution property only will not be taken over, and the generating and transmission property stranded high and dry.

In some states, such as Iowa and Kansas, franchises may be granted only for quite limited periods, often for only twenty years, and utility bonds frequently have maturity dates running well beyond the expiry dates of the franchises in the principal communities served. In such instances, these communities may refuse to renew the franchises, and in Iowa, at least, may force the company out of business without even offering to purchase the property. This sort of thing has also happened in Alabama. While it is true that such dire things have happened to date only in rare instances, there is nothing in the present legal and regulative set-up to prevent their happening on a much wider scale. A utility, which recently had to obtain the renewal of its electric franchise in an Iowa town, found itself confronted with the following argument: What do you want a franchise for? We like your service and we like your rates, and we are quite willing to have you go on serving us—without a franchise. In that way we will hold the whip hand over you, and any time we change our mind about you we can run you out of town. Of course, the position of the investors who had put their money into this utility on a long-term basis was entirely beneath the consideration of the exponents of this particular school of thought.

IN any case, the spectacle of a utility being forced to run the gauntlet of an unending series of popular elections in order to maintain the right to continue in business in its territory is anything but reassuring to the holders of its 30-year bonds. The American utility investor in many jurisdictions lacks hard and fast legal guaranties to se-

Franchises for Limited Periods

"In some states, such as Iowa and Kansas, franchises may be granted only for limited periods, often for only twenty years, and utility bonds frequently have maturity dates running well beyond the expiry dates of the franchises in the principal communities served. In such instances, these communities may refuse to renew the franchises, and in Iowa, at least, may force the company out of business without even offering to purchase the property."

cure his position and he must go ahead largely on the assumption that public authorities will exercise good faith in their dealings with him. When this good faith shows signs of crumbling, it is a small wonder that such investors usually develop a bad case of nerves.

With the idea of learning something of the legal framework within which British utilities operate, I was able to arrange an interview with the investment head of a large British insurance company. It was the day of Chamberlain's first flight (to Berchtesgaden) and in the tense atmosphere of that time the conversation tended to stray from the subject of utilities. However, it appeared that this gentleman, whose job it was to invest other people's money on a very large scale, did not have to give any consideration at all to the possibility of public competition with the private utilities in which he invested. When I inquired as to the legal basis upon which British utilities operate, he was able to refer, with very few qualifications, to several definite and rather concise Acts of Parliament.

APPARENTLY, it is the long-range public policy in Great Britain for privately owned utility properties to pass ultimately into the hands of public authorities. An Act of Parliament passed in 1925, relating to the private electric companies serving London, works in this direction. Utility investors in America will find its principal terms of interest:

1. In 1971 the London and Home Counties Joint Electricity Authority is to take over the properties, the assets in existence on July 29, 1925, free, and assets provided after that date at cost less depreciation on a defined scale.

2. In the interim the company is to be allowed to earn enough to pay bond

interest, preferred dividends, and a return of 7 per cent on its common stock; also sinking-fund payments which, together with the purchase money to be received in 1971, will permit retirement of the capital stock at par.

As a result of this act, the terms of which have been only briefly outlined above, investors in private electric utilities operating in the London area know pretty definitely where they stand. The bondholders have every assurance that their capital will be returned to them within a foreseeable future, either through the operation of sinking funds or from the purchase price to be paid for the properties. Even the common and preferred stockholders have a reasonable expectation of coming out whole, and the stage has been set for the successful raising of additional equity capital. Note that the permissible rate of earnings is based upon a definite figure, the amount of common stock, and not upon some ill-defined rate base which may vary with differing theories of valuation or with the different political winds that blow. In this way any savings effected through refunding of senior obligations at lower interest rates are largely passed on to the customers. Note also that original or historic cost, less depreciation, is the criterion of value used.

DURING the week prior to Munich, I took note of a couple of items in the London press which had nothing to do with the crisis. The first was a rather long article. It had to do with a monkey which, although indisposed, was forced to drive a car around a track to entertain customers in a side show at a carnival. The customers, instead of being entertained, waxed angry to the point of violence at the alleged cruelty to the monkey whose owner promptly landed before a magistrate. Such an incident taking place at that time was strangely refreshing to read about. The other newspaper item did not receive such prominence. It merely stated that several thousand electric customers in the London area would have their electric rates increased 10 per cent at the end of that week because of increased cost of rendering service. Only about ten lines; that was all. If the relative amounts of newspaper space devoted to these two incidents may be accepted as a criterion, the British public can accept a necessary raise in electric rates with more nonchalance than the mistreatment of a monkey. It was a fond memory for an investor in American utility securities to bring home.

On that pleasant note I would close, were it not that a short summary of the ideas presented in the preceding pages appears advisable.

AS compared with their British counterparts, investors in American utilities may count themselves blessed in that the properties securing their investments are secure from destruction in war and are likely to remain so. On the other hand, British utility investors are in a comparatively strong position in other respects.

In contrast to the situation in America, bonds on the average form a relatively small part of the capital structures of British utilities, and adequate provision has been made for retiring these bonds through sinking funds. Issues of such bonds are in-

trinsically a stronger type of security than American utility bond issues, which usually have no definite provision for amortization, and represent a much larger proportion of the values of properties securing them. British utilities are still able to finance to a large extent through equities. Their financial set-up appears to be much more closely geared to the legal framework in which they operate than is the case in America, and this legal framework is itself much more accurately and satisfactorily defined.

Sometimes Mediocrity Has Its Points

MEYER Berger, chit-chat columnist in *The New York Times,* told the sad tale recently about a utility service that was just too good to be satisfactory. It seems a lady in upper Park avenue called Western Union and asked if they had a messenger boy who could play a decent hand of contract bridge, to fill in for an invited guest who had become suddenly indisposed.

A quick canvass of the messenger bench failed to turn up anything more promising than a couple of dice experts and a merely fair pinochle player. The office manager recalled, however, that a certain clerk, recently promoted from the messenger force, had won some kind of a company bridge tournament. This ex-messenger was hustled back into uniform and puttees to fill the unusual assignment. He arrived at 9 p.m. and stayed until midnight, for the regular fee of 60 cents an hour, plus unofficial access to victuals not listed in the company's regular tariff files.

His partner, the lone invited guest, cleaned up in the game, thanks to the skill of the hired help. The office manager was later informed about how things turned out and was just congratulating himself on a deed well done, when the lady on Park avenue called again and complained bitterly:

"Next time we call for a messenger, we want a *messenger.* No more Culbertsons or Simses, *please.* We were most embarrassed."

The manager's reaction to this was quite gloomy:

"That's the great catch when you're selling service. You never know when you're going to oversell."

Wire and Wireless Communication

THE Western Union Telegraph Company on November 1st was ordered by the National Labor Relations Board, in a unanimous ruling, to disestablish and withdraw all recognition from the 21-year-old Association of Western Union Employees as the representative of the workers for grievances, labor disputes, or other conditions of employment.

Through the order, the board also commanded the Western Union to reimburse employees for "all amounts deducted from their wages as dues paid to the association by the check-off system since July 5, 1935," the date of the Wagner Act. Ruling that the Western Union had supported and dominated the employee organization since July 5, 1935, the board added:

> The association stands today precisely as it has stood since 1918, as the servant of the respondent (Western Union), alert to perform both actively and passively the rôle of an obstacle to freedom of organization enunciated by Woodrow Wilson in 1918 and reaffirmed in the (Wagner) Act on July 5, 1935.

Elation over the board's order was promptly expressed by the American Communications Association of the CIO, which complained against the Western Union to the board, and with whom the board ruled through its order. Daniel Driesen, "legislative representative" of ACA, hailed the decision as a "green light on the road to bona fide union organization for the more than 45,000 Western Union employees" all over the country.

The CIO union, now conducting a nation-wide campaign to organize Western Union employees, was formerly the American Radio Telegraphists Association.

NOT only has the Western Union dominated the employee organization since 1918, the board charged, but the organization "was formed in 1918 through the sponsorship and direction of the company and in pursuance of the company's admitted policy of prohibiting employees" from joining labor organizations of their choice. The NLRB stated:

> Its formation closely followed in point of time the refusal of the Western Union to comply with recommendations of President Woodrow Wilson's National War Labor Board.

The war board had recommended that the company reinstate discharged employees found to have been discriminated against because of membership in the Commercial Telegraphers Union of the AFL.

Contentions by the Western Union that it had effected changes in the structure of the association to stop practices prohibited by the Wagner Act were overruled by the NLRB, which said:

> The action of August, 1937, failed to emancipate the association and the respondent's employees from their nineteen years of subjugation to the will of the respondent. We are unable to find that the instructions were intended in good faith to purge the association of the respondent's domination and to release the respondent's employees from

the company-inspired compulsion to join the association as a necessary incident of their employment.

The board also asserted that "open hostility and espionage" had been used by the Western Union against outside labor organizations. Western Union officials in New York expressed certainty that the order of the NLRB would not be sustained in the courts.

A company statement signed by its president, Roy B. White, was issued soon after the 21-year-old employee group announced that it also would fight the NLRB order in the courts. C. J. Elsden, division president of the association, said that his group would go all the way to the United States Supreme Court, if necessary.

While the legal action is under way, the association will ask the company to continue the check-off of dues and other provisions of the old agreement.

* * * *

ELLIOTT Roosevelt, son of the President and head of the Texas State Network, on November 1st announced the formation of a new coast-to-coast chain of radio broadcasting stations. Mr. Roosevelt said the new chain would operate in competition with the Columbia Broadcasting System, the National Broadcasting Company, and the Mutual Network.

He said the chain was incorporated in Wilmington, Del., as the Transcontinental Broadcasting Company, with seven stockholder-directors, who were holding their first meeting in Chicago on November 1st. The stockholders, he said, were himself, H. J. Brennan of Pittsburgh, John Roberts and Clarence Crosby, both of St. Louis; Jack Stewart and Thomas Evans, both of Kansas City; and Lester E. Cox of Springfield, Mo.

Mr. Roosevelt explained that all the stockholders except himself were directors of the new corporation and that he was represented on the board by John T. Adams, with whom he was associated in the Texas Network. He stated:

> The Texas Network is a part of the new chain, but I do not want to give the impression that I am the organizer of the chain. I am, as operator of radio stations, only a one-hundredth part of it.

Mr. Roosevelt said the chain would include a few stations of 50,000-watt power, but the majority would be of 5,000 watts.

* * * *

TESTIMONY that metered telephone service proposed for Seattle by the Pacific Telephone & Telegraph Company does not measure calls accurately and is "basically unjust" to telephone users, was given at the telephone rate hearing on October 27th by Garrison Babcock, King county's (Wash.) chief consulting engineer in its fight against telephone rate revision.

Babcock, testifying before the state department of public service in Seattle, said he based his statements on a tally survey he conducted of 477 telephone users in the city who already are subscribers to the metered service, which now is optional. The survey covered 16 per cent of the measured service subscribers in the Seattle rate area, who kept tallies of their calls over a month's period last summer, Babcock said.

A test of the meter service was to be conducted by the county at the University of Washington College of Engineering.

Questioned by Prosecutor B. Gray Warner, Babcock read statistics from his survey. Babcock said he made the following conclusions from the survey:

Only 2.5 per cent of the central office registers agreed with the subscribers' record of calls made.

Eighty-three per cent of the meters overcharged customers by 26 per cent. The remainder of the meters "tend to undercharge."

Connection errors, resulting in false registration, occur in large numbers and the subscribers generally are not informed as to the procedure required to have errors credited in their favor, Babcock said.

Such subscribers, who, after complaint, are informed that credits for false connections may be procured, find that the procedure involved is more

costly in time and annoyance than the value of the credit obtained, the witness testified.

"Are you prepared to make a mechanical demonstration of some of the inherent defects in the meter itself?" Prosecutor Warner asked.

Babcock responded that he was prepared to make such a demonstration later at the university laboratories, which he said are well equipped for such a test.

* * * *

FOLLOWING at least temporary failure of a compromise proposal, the Oklahoma Corporation Commission on November 1st was going ahead with its statewide telephone rate hearings involving 144 local exchanges of the Southwestern Bell Telephone Company. The hearings affect all Oklahoma towns served by the Bell concern.

The compromise movement was led by William T. Rye, Vinita city attorney, who said he was convinced ultimately higher rates would come and suggested that the cities voluntarily accept slight increases. Although he called officials of 22 cities in which the company is seeking immediate emergency rate increases, only 16 cities were represented at one of the sessions.

When the mayors and attorneys found themselves hopelessly deadlocked, they adjourned without action. Bell attorneys were never called into the meeting. Oklahoma observers saw little chance for success of the proposal because of the political risk involved in voluntarily accepting a rate increase. Citizens of all state cities were on record as opposed to any rate increase. City officials think they will be in a better position politically, it was generally agreed, to fight a losing battle rather than be a party to a rate increase.

Meanwhile, the commission heard testimony of W. B. Stephenson, Oklahoma City, state engineer for the company, who declared that the American Telephone and Telegraph Company lost more than $1,000,000 in furnishing the "license contract" service to the state from 1929 to 1938.

This contract provides for the payment to the AT&T of 1½ per cent of Southwestern's receipts. In return, the American Company provides operating, engineering, laboratories, use of patents, and other assistance to the Southwestern Bell and other Bell operating companies.

H. R. Fritz, St. Louis, general inventory and costs engineer for the Southwestern Company, related the company's methods of computing the depreciation of telephone plant, including overhead and underground cables, poles, switchboards, conduit, and other equipment.

DEVELOPMENT on another front in the Oklahoma telephone controversy got under way on November 1st when the Southwestern Bell Telephone Company took steps to appeal to the Oklahoma Supreme Court for emergency rate increases in 21 state cities, and posted the proposed rate increases with the state corporation commission.

The company also filed application with the commission for a certification of the records so that an appeal can be filed with the supreme court. This is one of the first technical steps for an appeal from a ruling of the Oklahoma commission. Company attorneys said the appeal would be formally filed with the high court as soon as the record could be prepared and certified.

The company asked permission to post bond to protect subscribers against loss in case temporary increases were put into effect and later cancelled.

Attached to the motion was a schedule of returns on the company's investment at present rates, estimated at from 4.01 per cent profit at Seminole, to a 7.09 per cent loss at Clinton during 1938. The company declared its average return over the state last year was 3.98 per cent, including revenue from toll lines as well as local exchanges.

* * * *

FEDERAL Communications Chairman James L. Fly on October 27th said that there would be "some report shortly" on the possible consolidation of Western Union and Postal Telegraph companies.

The FCC has been considering the

question of merging these companies for some time. In 1935 the commission told Congress it lacked jurisdiction. It recommended that it be given the authority. The report on the possible consolidation of the two telegraph companies when issued will be submitted to Senator Wheeler, chairman of the Interstate Commerce Committee of the Senate.

On November 6th the FCC announced that it had proposed an increase in rates paid by the United States government for domestic telegraph messages from the present 40 per cent applicable to private commercial firms to 60 per cent of such charges. The proposal was contained in a report filed with the commission for the purpose of giving twenty days' notice to interested government agencies, who are represented by the United States Attorney General, to make any argument or file any exception before the commission enters a final order. The Federal government is, from the standpoint of volume, one of the largest, if not the largest, single customers of the Western Union and Postal Telegraph.

* * * *

THE nation-wide racing news empire dominated by M. L. Annenberg was menaced on November 2nd by a Federal-state move designed to sever its life lines. William J. Campbell, United States District Attorney, and Thomas J. Courtney, state's attorney of Cook county (Chicago), sent letters to the American Telephone and Telegraph, Western Union, and Illinois Bell Telephone companies demanding that they "immediately stop renting wire facilities to the Annenberg horse-race information services."

An AT&T spokesman in New York said the company would discontinue its service to the Nationwide News Service, an Annenberg organization, on November 9th.

A. H. Mellinger, president of the Illinois Bell Telephone Company, notified the prosecutors he had given notice to Annenberg, Nationwide News Service, and Illinois Nationwide News Service that their contracts would be severed at noon November 6th. He added that his company could not act as a policing agency, but would take proper action if authorities notified it of other clients who were using telephone service for illegal purposes in respect to bookmaking and gambling.

Western Union did not disclose what action it would take. Roy B. White, president, was en route from Chicago to New York at the time.

Campbell told reporters the edict covered only activities in the northern district of Illinois, but opined that, if the communications companies complied, the Annenberg race news interests would suffer a death blow because the contracts between them and the utilities were executed in Chicago. He expressed the belief that Federal prosecutors in other jurisdictions would act if the parties attempted to draw up new agreements outside the state of Illinois.

The situation was frozen, temporarily at least, on November 6th when Federal Judge James H. Wilkerson granted a temporary stay to prevent the Illinois Bell Company from shutting off service, only thirty-five minutes before the deadline set by the company. Judge Wilkerson explained that the purpose of the extension was to preserve the *status quo* until the Annenberg petitions for an injunction to prevent cutting off service could be heard and ruled upon.

* * * *

THE United States Supreme Court on November 6th refused to consider the protests of the Crosley Radio Corporation, Cincinnati, against a Federal Communications Commission order directing it to discontinue "superpower broadcasting" at Station WLW. The decision came in the form of a refusal to consider the District of Columbia Court of Appeals' denial of the company's protest against an FCC order directing it to cease broadcasting on power of 100,000 to 500,000 watts.

The court's opinion was regarded as likely to end serious attempts to have the FCC adopt the theory of superimposing a chain of extra high-powered stations upon the present broadcasting set-up of the nation.

Financial News and Comment

By OWEN ELY

Washington's $600,000,000 Industrial Power Loop

THE new National Power Policy Committee is reported to be studying a program prepared by Major Thomas R. Tate, chief of the Federal Power Commission Division of Gas and Electric Resources, for an elaborate "loop" or "grid," interconnecting principal public and private systems in the East. According to the *Electrical World,*

> The plan envisions linking of important centers east of the Mississippi through a series of interconnections and the construction of "supplemental" steam and hydro units at strategic points in the affected areas. The reported cost is estimated at $600,000,000, of which the industry presumably would be asked to put up a portion and the Federal government the remainder. The loop, broached as a national defense proposition, would connect industrialized areas from Birmingham to New York as far west as Chicago and Detroit, it is said. The Federal government's TVA and Santee-Cooper project in South Carolina would be included in the grid. . . .
>
> Because the new committee is dominated by public ownership advocates, reports are current that the group is "cooking up" something in the way of a lend-spend nature to put the government deeper into the power business. . . . Leland Olds, member of the FPC, was elected vice chairman . . . [which] gave rise to speculation whether the long-dormant St. Lawrence waterway and power project would be revived. This was enhanced by reports from Canada that Prime Minister Hepburn of Ontario and other opponents of the project had been placated and that the Dominion was now anxious to go ahead with the undertaking. President Roosevelt's remark to the report was that he "hoped so." . . .
>
> Meanwhile, rumblings of possible opposition to the committee were heard in Congress. It was reported that Representative May of Kentucky was displeased with the President's action in dissolving the Defense Power Committee, claiming privately that its transfer deprived the War Department of its authority to plan for industrial mobilization as contemplated in the National Defense Act.

Assistant Secretary of War Johnson appeared to be fully satisfied some time ago that actual power needs for national defense had been met when the utilities agreed to install additional generating capacity of 1,000,000 kilowatts. Since then, it is reported, the utilities have placed orders for nearly three times that much additional capacity; in the last few weeks alone, a dozen utilities have announced plans for expenditures of over $100,000,000 for 1,000,000 kilowatts additional capacity (all steam). Moreover, despite the sharp advance in recent output, most of the big companies still have ample capacity; Consolidated Edison, for instance, has about 56 per cent reserve above current record requirements. The real power "bottle neck" is in the inadequate wiring of industrial plants, due to the obsolete National Electrical Code, revision of which is now being sought by the utilities.

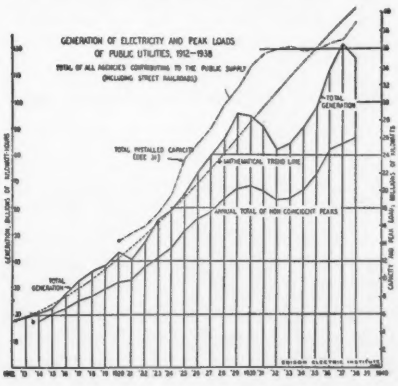
The reported plans for the new "loop" seem quite in line with former New Deal utility projects, which thus far have indicated a huge diversion of funds with doubtful tangible results. Apparently the administration is now anxious for a wider market for the output of its various hydro projects (having so far made unsatisfactory progress in attracting new industrial plants on the scale anticipated). The situation suggests that "national defense" coloring may be used to justify a huge interconnection system which would help furnish a market for government power through

a general tie-in with private utilities' distributing systems east of the Mississippi. This recalls similar coloration, such as "navigation," "flood control," and "irrigation," in the promotion of public power projects already authorized.

Trends in Utility Finance

PRESIDENT C. W. Kellogg of the Edison Electric Institute, in a recent talk before the Empire Gas and Electric Association, pointed out some interesting conclusions drawn from U. S. Census figures now available on the electric power industry, from which we quote excerpts as follows:

> . . . the plant account for combined electric departments at the end of 1937 was reported as $11,936,000,000 . . . and the total electric investment at about $13,272,000,000. This total compares with . . . $9,518,000,000 in 1927, a gain of 40 per cent in the decade but a comparatively slight gain . . . during the five years ending with 1937. In view of the fact that the utilities expended for construction during the five years ending in 1937 a total of $1,214,000,000, the increase of only $144,000,000 in investment requires some comment. The difference between the two figures of over a billion dollars represents plant withdrawn from service and indicates that the utility plant was improved to that extent in modernity and efficiency without increasing the amount of securities outstanding against it. On the other hand, the total of bonds and stocks was reduced by $241,000,000 in the 5-year period. . . .
>
> The Census figures refute in a striking way the impression that has gained credence in recent years that the utilities, in providing their new capital requirements, were tending more and more to depend upon bond financing, with a consequent danger that they would become waterlogged with debt. . . . The per cent [of capital and surplus] represented by bonds was in 1927 44.3 per cent; in 1932, 41.7 per cent; and in 1937, 42.4 per cent. . . .
>
> It is true that during the decade ending in 1937 the ratio of stocks to the balance sheet total described fell from 42.5 per cent to 40 per cent, but during the same period the amount in reserves and net surplus rose from 13.2 per cent to 17.0 per cent. The inability of the utilities (which has often been noted in recent years) to raise money by the sale of utility equities has not, therefore, been due to the deterioration of the equity ratios in financial set-ups. . . .
>
> One of the most striking developments of the decade ending with the last Census report is in the matter of appropriations for retirement. In 1927 these amounted annually to 7.8 per cent of annual gross operating revenue, while in 1937 they were 9.85 per cent—a relative increase of over 26 per cent. Furthermore, in spite of the large withdrawals of property, . . . the balance in the retirement reserve grew from 5.84 per cent of the balance sheet value to 8.36 per cent . . . —a relative gain in the decade of over 43 per cent. . . . The trend just described is of benefit to utility security holders in two respects; first, as providing a much larger source of construction funds that are raised without additional securities issues and second, as making for a more conservative capital set-up. . . .
>
> The inability of some holding companies since 1932 to pay full dividends on their preferred stocks arises, not from any deterioration in the financial structure of the utilities whose common stock the holding companies own, but from the effect on the net earnings of increased costs to the operating companies and due to inability to sell stocks, from the financing requirements that have had to be met from earnings. The financial set-up of the operating companies, and hence of the holding companies (as shown by the Census figures quoted), is as good today as it was in the height of the last boom. What has changed is the earnings and financing picture. . . .
>
> In the last 5-year period total operating revenue gained $335,000,000 while net operating revenue actually *decreased* $9,000,000. This naturally caused some diminution in what could be distributed as dividends on common stock of the operating companies and a corresponding diminution in holding company income; but a much more serious deterrent to the holding companies was the necessity of applying a part of the net earnings of operating subsidiaries



to construction purposes . . . or in some cases even to pay off maturing obligations of such operating companies. Neither of these requirements could be financed in the normal way during the last five years due to the government attack on the utilities and to the depression in the security markets. . . .

The chart [p. 691] indicates a development favorable to the investor, in the growth of load factor during the last quarter century—for higher load factor means more effective use of the investor's investment. The 1915-16 average showed about 4,000 kilowatt hours produced per annum per kilowatt of noncoincident peak, while in 1937 the corresponding figure was about 4,750, a gain in effectiveness of use of investment in the interim of nearly 20 per cent. . . .

With the present growth trend of about 3½ per cent annum, if we assume that one-half the new capital needed can safely be raised by the sale of bonds, then the balance of equity money will amount to 1¾ per cent of existing investment. With the present ratio of $6 of investment for each $1 of annual gross earnings, the equity requirement thus becomes about 10½ per cent of the annual gross; this is approximately the amount now set aside annually for reserves and for amortization of debt discount and expense. In the absence of a marked change in the percentage rate of growth, therefore, the amounts of equity security financing called for would be only the requirements for actual replacements. . . .

Corporate income available for paying a return on the investment grew but $91,000,000, while investment increased about $4,000,000,000. This showed but 2.3 per cent on the new money invested during the decade, which is not encouraging if it represents a permanent condition. The fact that any gain whatever was recorded is creditable, however, in view of the fact that taxes in the period increased $162,000,000, or 108 per cent, and retirement appropriations $82,600,000, or 61 per cent, while residence rates per kilowatt hour on the average *decreased* 2.41 cents, or 35 per cent. The operating ratio was reduced about 1 per cent in spite of the lower rates mentioned and of higher labor costs.

Revival of Corporate Financing Expected Soon

THE Treasury Department is taking full advantage of the sharp recovery in the bond market to complete successfully several important pieces of Federal financing, and New York city is expected to come into the market later this month with $30,000,000 serial bonds. But otherwise public offerings have been limited to a few small municipal issues, and the stalemate in corporate financing still continues. Halsey, Stuart & Co., syndicate managers for most of the big utility issues held over from August, have not yet indicated their program, but it is considered likely that the $52,500,000 Public Service of Colorado deal will be the first to be resuscitated.

One important piece of new business has been announced. Jersey Central Power & Light Company on October 27th filed with the SEC $39,000,000 first mortgage bonds due 1964 and $3,225,000 serial notes due 1940-49 (interest rates to be supplied by amendment). The First Boston Corporation will be the principal underwriter, and it is said that the financing, which has been under discussion for several months, will go forward on November 16th.

Our chart on page 695, which includes a record of new issues as compiled by the *Commercial and Financial Chronicle*, would seem to indicate that October was a very active month with about $153,000,000 financing. However, the total is largely accounted for by two big private deals, New York Telephone and New York Power & Light, both of which might just as well have been credited to September, when preliminary banking arrangements were largely completed. Final details were reported October 31st regarding the sale of the $66,582,000 New York Power & Light first 3⅜s to 13 insurance companies, on a 3½ per cent maturity yield basis. The company also plans to issue 192,105 shares of common stock to its parent company, Niagara Hudson Power, to repay advances.

Two relatively small private deals have been announced. Northwestern Electric Company (American Power & Light system) has arranged a private sale of $6,700,000 4 per cent bonds to a group of four insurance companies. Proceeds will be used for refunding and to pay preferred dividend arrears. The company also sold $2,800,000 debenture 4½s to its parent company to re-

fund a loan. Virginia Public Service Generating Company proposes to sell $1,400,000 first 4s and $300,000 4 per cent serial bank notes to institutions, and 3,300 shares of common stock to Virginia Public Service Company.

The public service commission of New York, rescinding an order issued in September, has authorized Long Island Water Corporation to issue $2,144,000 first 4s of 1964, to be sold at not less than 104, for refunding purposes.

According to a compilation issued by the SEC, utility financing accounted for over half of the $566,464,000 security registrations which became effective during the September quarter. Of the total amount for all companies, 87 per cent represented long-term bonds — about equally divided between mortgage issues and debentures. The amount of short-term notes was negligible (most of the latter, being sold privately, do not require registration). Common stocks accounted for 6 per cent, preferred 4 per cent, and "certificates of participation" about 2 per cent. Only about 9 per cent of total financing represented "new money."

Associated Gas Integration Plan

ASSOCIATED Gas & Electric Company has filed a voluntary integration plan with the SEC, providing for liquidation of the company and transfer of the assets to Associated Gas & Electric Corporation, present subholding company for the entire Associated system (100 per cent controlled by the Company).

Debenture holders would receive preferred stock of the Corporation (10 shares for each $1,000 bond) with a dividend rate corresponding to the coupon rate on the debentures, but would have the option of obtaining new income debentures bearing lower interest rates. Holders of convertible obligations would receive 11 common shares of the Corporation for each $100 principal amount and for each $100 accrued unpaid interest. Holders of preferred stock would receive 10 common shares of the Corporation for each $100 liquidation value of the stock and for each $100 accumulated and unpaid dividends. Each holder of preference stock would get 10 participating shares of the Corporation for each $100 liquidation value of the stock and for each $100 of accumulated and unpaid dividends. Each share of Class A stock would get one participating share of the Corporation. Holders of Class B common and warrants would receive no new securities. Holders of scrip would obtain an equal par amount of preferred stock, paying the same rate of dividends.

When the plan is consummated, voting power in the Corporation would be held approximately as follows: convertible obligations, 48 per cent; scrip, 8 per cent; and preferred stock, 44 per cent. The common stock to be issued by the Associated Gas & Electric Corporation would be entitled to dividends at the annual rate of 50 cents a share before any distribution on the participating shares; after such payment both common and participating stocks would share equally in any further payments. The common stock would be accompanied by warrants entitling the holders to buy additional shares within five years at the rate of two shares for each five shares held, at a price of $8 a share the first year, after which the price would be increased 50 cents a share each succeeding year. Warrants would become void in five years.

One Cent of Consumer's Dollar Goes for Electric Service

THE Edison Electric Institute, using data prepared by the National Industrial Conference Board combined with its own figures, has compiled an analysis of the consumer's average dollar expenditure, from which we select the following comparison of 1919 and 1937 figures:

	1919	*1937*
Electric service	0.3%	1.1%

Electric appliances	0.3	1.8
Other home expenses	20.5	24.6
Food & soft drinks	33.9	24.5
Clothing	14.2	10.0
Automobiles & transportation	7.8	11.0
Social-cultural activities	5.8	5.5
Alcoholic beverages	3.5	5.1
Tobacco	2.5	2.4
Recreation	3.5	4.9
Health	3.6	4.6
Direct payments to government	2.3	2.7
Personal appearance	1.8	1.9
Total	100.0	100.0

It is interesting to note that electric service constitutes 3 per cent of the total cost of renting, operating, and maintaining a home. Twice as much is paid for tobacco and five times as much for liquor, as for electricity. Personal appearance —perfumes, cosmetics, barbers, beauty parlors, and jewelers — absorbs nearly twice as much of the consumer's dollar as the amount paid for electricity.

However, expenditures for electric service grew during the 18-year period from $175,000,000 to $780,000,000—a rate of growth exceeded only, among the items tabulated, by the amount spent for electric appliances.

Corporate News

NORTH American Company has made some important changes in its executive line-up. James F. Fogarty has resigned the presidency to become chairman of the new executive and finance committee. He was succeeded as president by Edward L. Shea, former executive vice president of Tidewater Associated Oil Company. Harrison Williams, formerly chairman of the executive committee and a large stockholder, has become chairman of the board. In future Mr. Fogarty will devote his attention principally to financial and corporate matters.

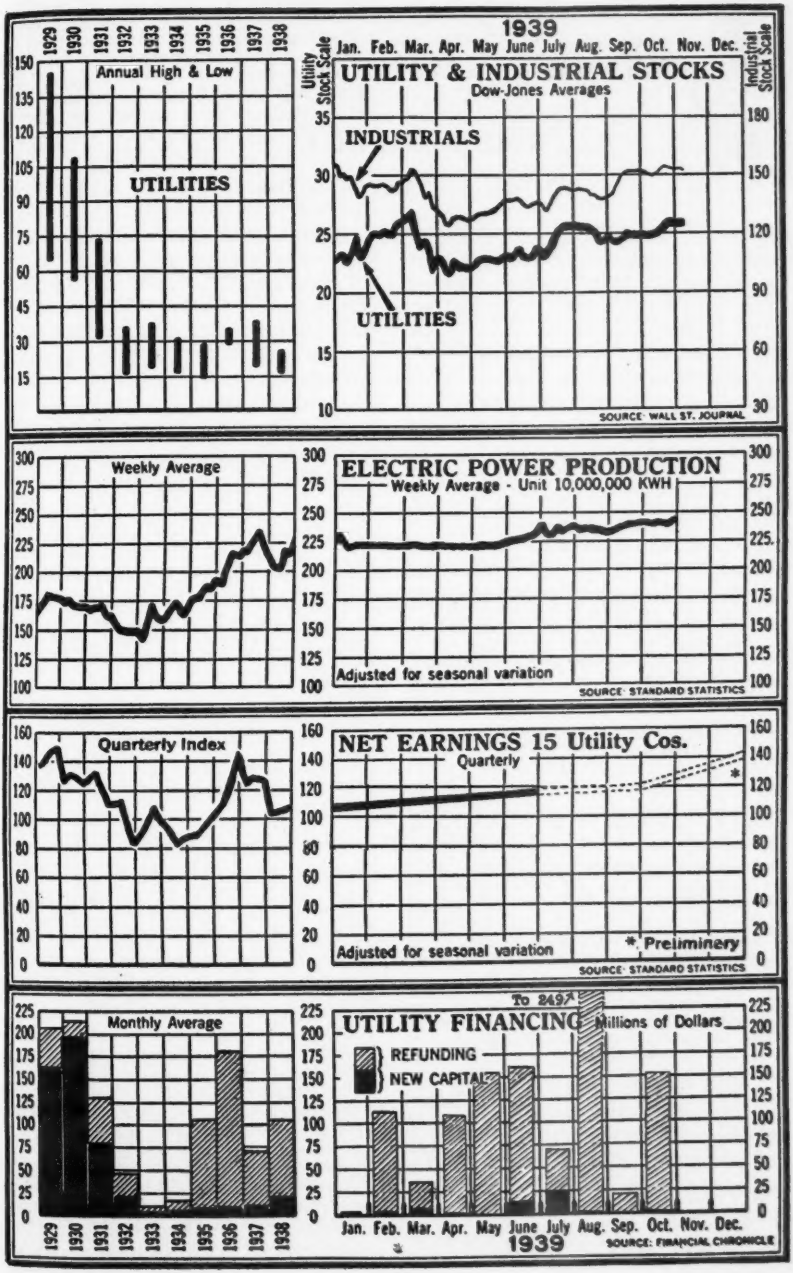
United Corporation has begun to dispose of some of its utility holdings, having sold 13,500 shares of Columbia Gas and 14,300 shares of Niagara Hudson in the open market.

Stockholders of Interborough Rapid Transit Company have elected a new board of directors described as "100 per cent anti-unification." The new directors include Charles Franklin and several others associated with the Manhattan Railway, which has heretofore differed with the IRT over unification. Perhaps the new line-up is due to the success of the city in tearing down the Sixth avenue "El," and its present request of transit commission approval for "condemnation" of almost all the remaining Manhattan and Bronx elevated lines. Demolition of these lines might take the Interborough "out of the red" and give stockholders some real equity, but they have no direct voice in unification proceedings, and considerable progress has been made in obtaining bondholders' assents. Bondholders are also asking the Federal court for foreclosure, which if granted would give stockholders only the $3 a share provided under the unification plan, which they deem inadequate.

Control of Abitibi Power & Paper Company would be placed in the hands of the present bondholders under the proposal for reorganization of the company announced recently by Thomas Bradshaw. As summarized, the plan is: (1) That existing bondholders be given 40 shares of new $1.85 convertible preferred; (2) each share of 7 per cent preferred to be converted into 12 new common shares; (3) each share of 6 per cent preferred to be converted into 4 new common; (4) each common share to be converted into one-tenth share of new common; (5) unsecured creditors to accept a moderate reduction in the amount of their claims and be paid in cash over a period of three years.

Reports that Associated Gas & Electric was negotiating for the sale of Staten Island Edison to Consolidated Edison have been denied.

Federal Judge William H. Holly has approved Atlas Corporation's plan for reorganization of Utilities Power & Light Corporation.


1939
1929 1930 1931 1932 1933 1934 1935 1936 1937 1938
Annual High & Low
UTILITIES
Utility Stock Scale
Jan. Feb. Mar. Apr. May June July Aug. Sep. Oct. Nov. Dec.
UTILITY & INDUSTRIAL STOCKS
Dow-Jones Averages
INDUSTRIALS
UTILITIES
Industrial Stock Scale
SOURCE: WALL ST. JOURNAL
Weekly Average
ELECTRIC POWER PRODUCTION
Weekly Average - Unit 10,000,000 KWH
Adjusted for seasonal variation
SOURCE: STANDARD STATISTICS
Quarterly Index
NET EARNINGS 15 Utility Cos.
Quarterly
Adjusted for seasonal variation
* Preliminary
SOURCE: STANDARD STATISTICS
Monthly Average
To 249?
UTILITY FINANCING
Millions of Dollars
REFUNDING
NEW CAPITAL
Jan. Feb. Mar. Apr. May June July Aug. Sep. Oct. Nov. Dec.
1939
SOURCE: FINANCIAL CHRONICLE

What Others Think

Investment Bankers Worried About Private Enterprise

IMPORTANT viewpoints of collateral interest to students of regulation were expressed at the recent national meeting of the Investment Bankers' Association at Del Monte, California. Among the speakers was Lionel D. Edie, New York economist, who spoke on the subject of "Private *vs.* State Enterprise," and placed particular emphasis on the effect of international hostilities upon the outlook for continued free private enterprise in the United States.

Mr. Edie warned the investment bankers of the nation to abandon their policy of "appeasement" with government and to fight for their rights as a matter of patriotic duty, in order to bring to an end the "dead decade" of industrial stagnation. He added that from the standpoint of national defense, the industrial plant of the United States is hopelessly inadequate by reason of its starvation for new capital. Mr. Edie continued:

> The time has come for investment bankers to fight or face extinction. Confronted by a war crisis abroad and a challenge to national defense at home, general realization that industrial progress in the United States has stagnated for the last ten years will see a determined effort to make investment bankers the goats.
>
> For instance, the railroad industry would be in a frightful jam if forced today to move a million freight cars of traffic a week. This great industry is the most serious bottle neck in the whole American economy. More than 40 per cent of its mileage is in some form of default or receivership. There are countless bottle necks in other directions and my personal estimate would be that it would take $25,000,000,000 of new capital to put the capital plant and equipment in shape to afford a decent basis of national defense.

Mr. Edie listed the following popular fallacies about war:

1. The idea that its duration will more or less parallel the last war.

2. The idea that the United States can stay out of a long war.

3. The idea that the United States can simply stand on the sidelines as a neutral and have a splendid war boom, and that such a boom will save the bankers from their troubles without much effort on their part.

4. The notion that the United States itself is better prepared for national defense than the last time.

MR. Edie expressed the opinion that unless peace is negotiated within a few weeks, the exhaustion point for the combatants in the present European war will come much sooner than it did in the World War. His view is that the United States must and will enter the war if it proves to be of long duration. He predicted a program of national defense in the United States on an unprecedented scale, but with "hopelessly inadequate preparedness on the economic side."

On the score of industrial expansion, he pointed out that the nation's growth trend has averaged 3 to 4 per cent for 150 years, and that, in the decade since 1930, the production index has failed to go ahead of the peak of the previous decade for the first time in the nation's history. Mr. Edie further stated:

> One reason is to be found by comparing private financing with government financing during the period. In the decade of the 1920's there was $9 of private corporate financing for every $1 of government financing, whereas in the 1930's there has been only 30 cents of private financing for each $1 of government financing. Since the New Deal, the average new capital by private financing has been about $600,000,000 annually, against $3,600,000,000 in the previous decade, or about one-sixth as much.
>
> In 1930 the value of productive plant and

equipment of all kinds in this country was about $125,000,000,000. This represented the accumulation of the ages. With obsolescence and depreciation allowed for, it is doubtful if this plant today is any better than it was ten years ago. We are just finishing a dead decade in which stagnation has supplemented progress and dynamic growth has given way to arrested development.

In urging investment bankers to fight to end efforts to establish a system of "capital-credit banking run by the government," Mr. Edie paid tribute to the efforts of Wendell L. Willkie in fighting not only the battles of the Commonwealth & Southern Corporation, but of the utility industry generally:

> There are those who say: If you fight you will be crucified. That is what people said to Wendell L. Willkie. But when he put up a fight of courage and honesty, he not only was not crucified, but for the first time even the radical New Deal began to have respect for leadership of the Willkie type. The more supine the business man or banker, the less respect is held for him by intellectual Washington.

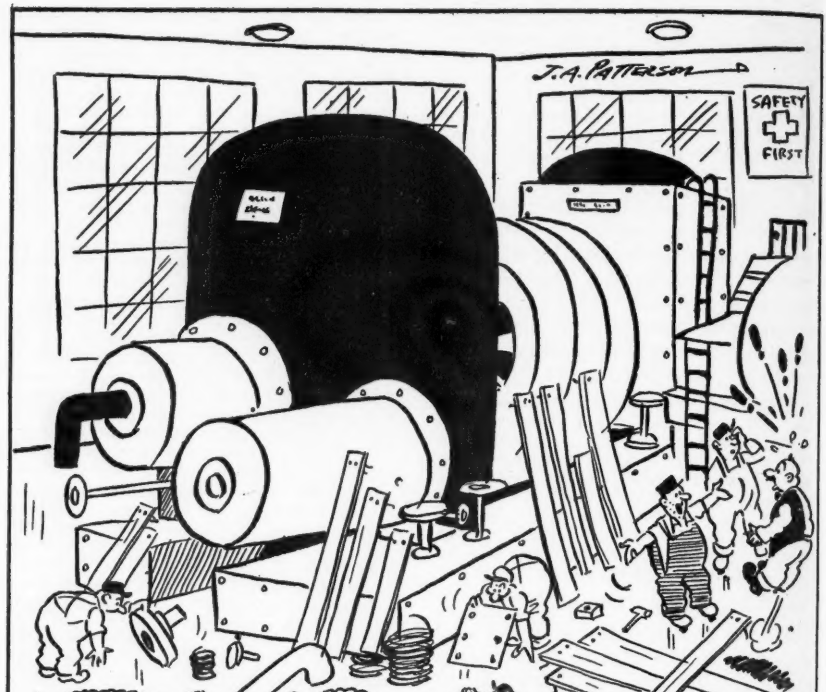
Mr. Edie pointed to the fact that in France the rival groups composed their differences in the interests of national defense. In the case of England, he reminded that Winston Churchill's famous book was titled "While England Slept," adding that unless action is taken now, it will be possible for a book to be written here on the subject, "While Private Finance Slept in America."

DR. Everett Dean Martin, professor of social philosophy at Claremont College, California, another speaker at the Del Monte meeting, told the investment bankers that the conflict of political philosophies today is no longer an academic question, and that every totalitarian government is a revolutionary movement, with the whole system of free government, private property, consent of the governed, and the English-speaking system of checks and balances at stake. He characterized the present war in Europe as only one aspect of a larger conflict of social and political objectives from pressure groups the world over, not excluding the United States. Dr. Martin continued:

> We are rapidly approaching a planned economy even in America, and planned economy is impossible without dictatorship in the end. There is a point on the road we are now traveling beyond which human liberty cannot go. Once we turn that corner we can never come back.
>
> It is customary to lay the blame for this course on the national administration. Obviously, the administration has, to say the least, done nothing effective to check this trend. Whatever may be said of the present government, and much can and should be said, this trend toward planned economy and dictatorship goes deeper than contemporary politics. Something is happening in the minds and wills of the American people. There is a lowering of the level of moral independence, and this growing dependence on government affects people of all classes. Ever since the Civil War there has been a disposition of certain business interests to look to the government for special privileges of all kinds. Now the general public demands the democratization of subsidies, with the disastrous results which all see.
>
> The history of the failures of previous democracies shows us that no nation can long remain free while any considerable number of its citizens are willing to try to get something for nothing out of government. Government will always take advantage of such willingness to increase itself at the expense of our liberties, our properties, and our very lives. The best defense of America is to root out the disposition which, whether we know it or not, leads inevitably to a socialistic state.

ANOTHER address before the bankers' meeting of special concern to utility industries was one discussing the issuance of revenue bonds. It was given by James Lynn Beebe, well-known California attorney and president of the Los Angeles Chamber of Commerce. Mr. Beebe said that revenue bonds are not entirely new to the financial community in the United States, although few of such bonds or notes were issued before the recent impetus provided by Federal encouragement of publicly owned utility plants. He distinguished between the modern municipal utility revenue bond and the financing of privately owned toll bridges and utilities through the sale of securities chiefly on the ground of tax-exemption features of public revenue bonds.

He also observed that while with private enterprise the demand for profits



"TH' DIRECTIONS MUST HAVE BEEN LOST WHEN IT WAS UNPACKED, BOSS!"

tends to insure efficient management, the public enterprise may attract a politically minded management more sensitive to vote appeal than to the dictates of efficient operation. He observed also that public projects thereby financed by revenue bonds may be the result of political promotion inspired by persons who profit through the creation of such public properties and have no responsibility for their subsequent successful operation.

To prevent such promotions with their considerable number of overfinanced and improperly planned projects, Mr. Beebe suggested a system of controls to safeguard the launching of new projects to be financed by revenue bonds. He conceded that no formula could possibly give the right answer in every case and that some bad ventures would be approved, while some good ones might be stopped by any set of controls.

THE speaker first considered safeguards against unsound projects and under this heading he advocated: (1) That revenue bonds be issued pursuant to a two-thirds vote of the electors after adequate notice of the election; (2) revenue bonds should bear a low maximum interest rate; (3) the bonds should be sold publicly either at par or at a small discount in order to eliminate speculative enterprises attracted by the

promise of a big return based on a high interest rate—and, above all, revenue bonds should not be privately issued in payment for construction work or property; (4) all contracts for construction should be let after public bidding to avoid political favoritism.

Mr. Beebe's next group of safeguards were designed to insure reasonable operation, and included the following requirements: (1) Annual informative audits; (2) a check on the reasonableness of operating expenses; (3) special audits to be furnished at the request of a substantial number of bondholders; (4) open access to all records pertaining to the enterprise; (5) statutory protection against competition.

The third group of safeguards were designed to secure adequate revenue and included the following points: (1) A statutory requirement of a rate level sufficient to pay fixed costs and operating expenses, and to set up suitable reserves; (2) revenues from the bonded project should be segregated from other income of the public agency; (3) all such revenues should be held in trust for payment of principal and interest on the bonds; (4) the bonds should have a prior lien on project revenues; (5) deposits of such revenues should be secured by Federal bonds or other choice obligations; (6) sinking-fund provisions should be limited to choice types of bonds; (7) no free service to public agencies by the bonded project; (8) proper insurance; (9) clear title; (10) authority for the use of construction funds to be exercised only upon approval by qualified engineers.

FINALLY, Mr. Beebe suggested revenue bond safeguards to permit the expansion of a going utility project or the refinancing of an existing one. Suggestions under this head were: (1) new bonds for extensions or improvements should have a lien upon the revenues subordinate to the liens of outstanding bonds; (2) statutes should authorize one issue of revenue bonds to include bond extensions and improvements and the refunding of outstanding bonds; (3) refunding of bonds with the consent of a certain percentage of bondholders should be authorized; (4) terms of original revenue bond issue should be subject to modification with the consent of a percentage of the bondholders. Mr. Beebe concluded:

> I realize that in the foregoing outline of safeguards, I have probably omitted several which you here may think of. I have not attempted to outline many provisions which might appropriately be inserted in the bond proceedings or in the indenture or agreement pursuant to which bonds are issued.
>
> The statute should be flexible enough to permit the incorporation in the bond proceedings of such safeguards as the purchasing syndicate may require.
>
> In closing, may I suggest that the operation of the various controls should be carefully watched and that information relating to their success or failure should be circulated among the members of this group.

Mr. Beebe also stated that in the financing of small public enterprises, particularly well-established successful utilities, some of these safeguards may be unnecessary.

—F. X. W.

PRIVATE *vs.* STATE ENTERPRISE. Address by Dr. Lionel D. Edie before 28th annual convention, Investment Bankers' Association of America. Del Monte, Cal. October, 1939.

CONFLICTING PHILOSOPHIES OF GOVERNMENT TODAY. Address by Dr. Everett Dean Martin before 28th annual convention, Investment Bankers' Association of America. Del Monte, Cal. October, 1939.

INTELLIGENT CONTROL OF THE ISSUANCE OF REVENUE BONDS. Address by James Lynn Beebe before 28th annual convention, Investment Bankers' Association of America. Del Monte, Cal. October, 1939.

¶ "WHEN *the politicians essay the rôle of patent-medicine men, selling the nostrum of public ownership as a cure-all, they are bound to arouse suspicion.*"

—STATEMENT,
Public Service Magazine.

The Proposed Divorce between Pipe Lines and Petroleum Production

THE Temporary National Economic Committee, under the chairmanship of Senator Joseph C. O'Mahoney of Wyoming, has been going along in Washington with hearings on the general subject of monopoly and competition as exemplified in various phases of American business. Recently these hearings took a turn which developed some testimony bearing on the subject of regulating pipe lines as common carriers.

The testimony had to do mostly with petroleum pipe lines which are under the broad but not very active jurisdiction of the Interstate Commerce Commission. (Natural gas pipe lines, to the extent that they operate in interstate commerce, were, of course, brought under the jurisdiction of the Federal Power Commission with the enactment of the Natural Gas Act in 1937.)

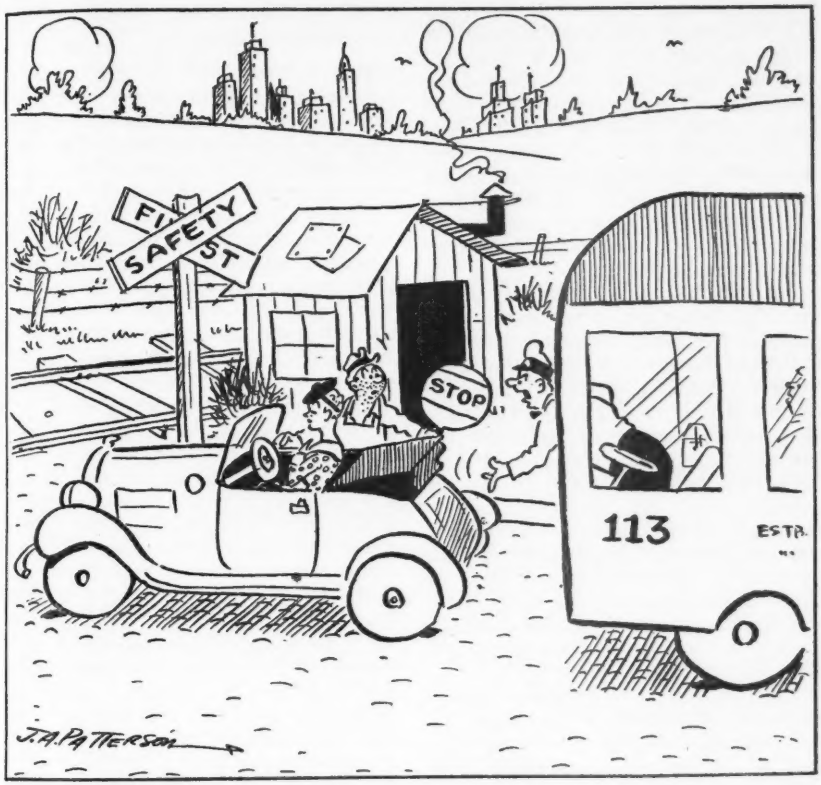
The most interesting problem posed by the witnesses before the O'Mahoney committee came from the so-called "independent" refiners and distributors of petroleum products. They wanted Congress to pass a law which would require the big petroleum producers, which also operate their own pipe lines, to get rid of their corporate control over the latter. In other words, the independents would like to have legislation that would divorce petroleum production from its transportation by pipe-line carriers, as far as corporate organization or control is concerned.

The reason given by the smaller petroleum producers for such a request was that the big pipe-line companies keep the rates for transportation so high that smaller competitors are unable to use the pipe lines, thereby creating an economic situation which, they feel, results in an unfair advantage for the joint producers and transporters.

The case for these larger groups was forcefully stated by the president of the Standard Oil Company of New Jersey, William Stamps Farish. He said that the construction and operation of a long-distance trunk line is an expensive business and further observed that it was probably for that reason that the small producers were unable to obtain the necessary capital to own their own trunk pipe lines. But, by the same token, he said, the larger producers can obtain a return on their investment even at the so-called high prices prevailing, only if the pipe lines are used at capacity or near capacity from the time they are built until the time when the fields that they drain fail, which automatically leaves the pipe line of little more than junk value.

MR. Farish went on to say that to do this naturally requires the coördinated efforts of the production phase at one end of the pipe line and an efficient marketing organization at the other end. In other words, if these two organizations were to be divorced, it would leave the pipe-line business, as such, at the mercy of unpredictable variations in supply and demand. There would be few, if any, pipe lines that would attract substantial investment under such circumstances.

The independents suggested an analogy between the present pipe-line situation and the railroad situation of the early years of the twentieth century, which led to enactment of Federal laws requiring railroads to divest themselves of control of production industries which must rely on railroad transportation to survive. The larger pipe-line operators counter with the distinction that railroads are by nature common carriers of all kinds of commerce and must serve all lines of industry. They must do this without the temptation to practice discrimination which might obtain if the railroads themselves were allowed to develop or retain any substantial financial interest in nonutility commercial activity. The pipe lines, large producers say, are more or less the exclusive corollary



"WHEN YOU GET THROUGH WITH YOUR SOCIAL DUTIES, MAYBE YOU'D LET MY BUS PASS!"

or "plant extension," so to speak, of petroleum production.

Discussing this controversy, *The Wall Street Journal* recently stated editorially:

> Before it reaches a conclusion on the demand for pipe-line segregation, the TNEC will have to clear its mind on two or three main points of controversy: (1) Has the so-called independent oil refiner recourse (to the ICC or a state commission) which is of practical use against oppressive or discriminatory pipe-line rates? (2) If his recourse on rates is not a real defense, can it be made so by legislation which does not require a forced sale of hundreds of millions worth of property? (3) Is there reasonable certainty that independently owned pipe lines could provide the required transport service at rates generally lower than those now charged?
>
> The fact that pipe-line operation by the big integrated companies has shown a continuous and apparently high return on investment does not of itself prove that their charges are unreasonable or that the lines would be equally self-sustaining if they were broken off from integrated operation and compelled to subsist as isolated common carriers on rates fixed by public and necessarily political authority. The interest of the independent refiners face to face with the integrated majors, moreover, is not the only interest here involved. There is the great consumer interest in a petroleum industry of the highest efficiency, from which tens of millions of gasoline and oil users have to buy.

But it is exceedingly doubtful if the O'Mahoney committee will approve a recommendation for such a drastic divorce law against the pipe lines and the producers as the independent petroleum group appears to favor. The principal obstacle would be the obvious question as to whether active regulation might not solve the grievance of the independent producers, if they have any, rather than drastic legislation for mandatory industrial divorce.

Some of the opinion testimony before the O'Mahoney committee by the independents pointed to the broad generality that pipe-line carriers cannot be effectively regulated by public authority. But there was little factual evidence to indicate that vigorous regulation in this field has even been seriously attempted.

In view of the warning of the big producers and pipe-line operators that the segregation law would bring dire economic results in the field of pipe-line operation, it seems more probable that the O'Mahoney committee will explore the regulatory approach more carefully before deciding in favor of recommending a bill for outright divorce.

Even so, additional legislation may be necessary to make pipe-line regulation more effective. Incidentally, in the allied field of natural gas regulation the Federal Power Commission does not seem to be greatly disturbed over the fact that most natural gas producers own and operate their own delivery service. Nor does this practice seem to be interfering with steps taken by the FPC to regulate natural gas pipe lines just as effectively and thoroughly as the FPC has been regulating interstate electric power activities.

However, the fundamental issue raised here is an interesting one, even if it is of little more than academic concern in other utility fields. For example, few, if any, state laws forbid gas, electric, telephone, or carriers other than railroads to engage in nonutility operations. There is such a restrictive provision in the Public Utility Holding Company Act, but that, of course, applies only to holding companies and it has no effect on the corporate powers of local operating companies.

There has been some criticism from reform quarters about combined utility operations, especially with respect to gas and electric service in the same community, but no legislation along this line has actually been enacted.

About the nearest approach to a restriction of utility companies from engaging in nonutility activities was seen in the so-called "antimerchandising" agitation of a few years ago, which passed its peak and accomplished only two state laws actually forbidding utilities to sell appliances, one of which was subsequently held unconstitutional.

For all this apparent freedom of corporate action, operating utilities have generally kept to their own knitting. For the most part they have voluntarily limited their activities to purely public utility business in declarations contained in their respective articles of incorporation. A few mining concerns or large manufacturing plants continue to operate local side-line electric utility businesses without corporate segregation. And in such cases the state commissions seem to regulate the utility aspects of these combination plants without any noteworthy difficulty.

Of course, there are many combined utility operations and very important ones at that. Such was the inescapable effect of the historical evolution of our various utility forms. Many an electric utility company of today is the child of a transit parent or a gas parent and the parent and child continue to thrive under the same corporate form. Where utility activities have been the outgrowth of nonutility operations, however, the tendency has usually been for the parent industry to cut the child adrift as a separate corporate entity as soon as it became apparent that corporate weaning would be to the best advantage of both parent and child. It is probably because of this natural tendency that there has never been a serious enough problem along this line in the ordinary utility field to give rise to agitation for corporate divorce of

utility enterprise from nonutility commercial activity.

And this in turn suggests that the very pressing nature of that problem in the petroleum industry indicates by its very presence that petroleum production and petroleum transportation are complementary phases of the same industrial operation, and that to separate them would, as one pipe-line operator suggested, be about as sensible as to require a large department store to get rid of its delivery service on the complaint of small retail competitors who could not afford such service of their own.

—F. X. W.

PIPELINES AND INDEPENDENTS. *The Wall Street Journal.* October 30, 1939.

Notes on Recent Publications

AMERICAN TEL. & TEL. By Horace Coon. Longmans-Green & Company, Inc. New York, N. Y. Price $3. November, 1939.

The Bell telephone system has been called monopoly at its best. At any rate, few will deny that it is monopoly at its biggest and at its most effective. This situation, admitted by Bell champions, and justified on the ground that the very nature of telephone service demands a coördinated control, is in this volume subjected to an interesting but critical analysis. The author, Mr. Coon, does not confine himself to the findings or evidence brought out at the recent special telephone investigation by the FCC, but has drawn upon it largely. In short, it is a case history of the birth and growth of the American Telephone and Telegraph system, written in popular style. The author's criticisms of Bell practice are relatively mild compared with other recent publications on this subject; but while recognizing the virtues of Bell efficiency and organization, Mr. Coon's pronounced social consciousness is evident at all times.

The temper of the book is best demonstrated by the following thought-provoking questions (page 14): "Even though we have the cheapest telephone service in the world, could it be made cheaper? Even though it is the most efficient, could it be made to serve its subscribers better? Congress has said that the American people are entitled to know if they are being overcharged, even though they may be satisfied with the service. Would the public be served by a complete FCC regulation of the Bell system? Are long-distance rates too high? Should Western Electric be properly considered a public utility? Is such an enormous financial power as the AT&T a threat to the public or to democratic institutions? These are questions which will not rest until they are answered. The public and the stockholders have by no means heard the end of the discussion; it is probable that they have heard only the beginning."

Clearly, this is a volume which those connected with the telephone industry, as well as those interested in utility regulation generally, will want to have and read. Specifically, the book starts out by describing the extent of "the world's biggest monopoly," and then traces its development from the struggles of Alexander Graham Bell through the early contest with the Western Union and the flourishing leadership of the late Theodore Vail.

The chapter (XI, page 136) on the Bell system's adventure with government ownership during the World War period is a particularly worthy treatment in brief form of a phase of telephone history which has not received very much attention. The author points to the novel conclusion that the mild dose of government operation administered the telephone industry during the brief period of Post Office control in 1938 has had the virtual effect of an inoculation providing the telephone utility with relative immunity from public ownership agitation ever since.

About the only forthright conclusion reached by the author is that trust busting is stupid and that efficient monopoly should be encouraged, subject to thorough regulation in the public interest. The book has a liberal bibliographical list and index.

A. T. & T. By N. R. Danielian. The Vanguard Press. New York, N. Y. Price $3.75. 460 pages.

Despite the author's protestation to the contrary, a reading of this book by one who is familiar with the background of the FCC special telephone investigation can hardly fail to give the impression that it is more or less of a "digest-rewrite" job in popular style of Commissioner Walker's Proposed Report, with occasional excursions into the FCC special staff data to bring up some of the more sensational bits of anti-Bell evidence. Even as a restatement of the Walker report, Mr. Danielian's effort is marred by an obtrusive class consciousness, which breaks out in the very opening sentence of the preface and reaches a rather bewildering

peak in the concluding chapter, which includes the author's reflections of political economics. ("Indeed I tremble for my country when I reflect that God is just.") Likely to prove a bit tiresome if you aren't particularly enthusiastic about the sort of editorial fare one gets in *The New Republic* or *The Nation.*

Aside from an industrious collection of gossip about the telephone industry's past, Mr. Danielian's sense of values will not impress the discriminating reader. For example, he seems to think that the FCC special telephone investigation was the most exhaustive industrial probe ever completed by a Federal agency, apparently overlooking the fact that it was but a more expensive imitation of the 8-year investigation of the electric utility industry by the Federal Trade Commission, even to the extent of following up old FTC evidence leads and technique. His statement that the principal difference between the Walker report and the final FCC report relates to the Western Electric and legislative recommendations is another startling sample. There is much more of this. A little originality of approach or development would have helped the book tremendously, but the author sticks pretty monotonously to the text.

FAIR RETURN ON A FAIR RATE BASE. Address by Dr. Joseph R. Rose at the 44th annual convention of the Pennsylvania Water Works Association. Atlantic City, N. J. October 20, 1939.

A utility should have a fair chance to compete with other industries, according to Dr. Rose, who is assistant professor of transportation and public utilities at the University of Pennsylvania, and who believes that "the real issue is the amount of operating revenues to be allowed." This, he thinks, has been largely ignored in all the bickering over the rate base. Dr. Rose stated:

"Utilities should be permitted to charge rates that will yield enough revenue to pay a return to capital and labor that is comparable to such returns in unregulated industries, with which the utilities compete for their supplies of capital and labor. The regulatory authorities tacitly recognize that utilities must bid for labor in the open market, but on the return for capital they ignore this principle."

The speaker declared that "the rate base should be the undepreciated reproduction cost of a reasonably efficient plant." He suggested that "the market value of the securities of an unregulated industry tends to approximate the reproduction cost. By finding the ratio between earnings and the market value of those securities we get a percentage, which figure may be used as the rate of return." Dr. Rose said Pennsylvania regulation has been "arbitrary."

PROPERTY RECORDS SYSTEMS. Report of Property Records Committee, Accounting Section, American Gas Association, 420 Lexington Avenue, New York, N. Y. 1939. Price, $2.50 single copies; $2 each for 10 copies; $1.50 each for 20 or more copies.

This volume is the outgrowth of an organization meeting of the 1939 Property Records Committee of the American Gas Association, which was held in New York in November, 1938. At that time the question as to how the committee might render the greatest service to the industry was thoroughly discussed. It was unanimously agreed that the problem could be best handled if each committee member would prepare a complete summary of a plan for establishing and maintaining a property records system. A uniform outline was agreed upon and the result was 12 different suggested property record systems.

Because of the uniform outline followed, all 12 papers met on common ground, point for point, thereby enabling the reader to compare individual theories and opinions of the best informed and most widely experienced specializing executives of the gas industry. Originally the committee planned only distribution of the condensed summary of the papers submitted, but the wide divergence of opinion and the general originality and excellence of various plans submitted moved the committee to make all of them available in complete text in the form of a volume.

There are also included, by way of appendix, discussions on particular aspects of property records maintenance, and the important problem of distinguishing between a continuing property unit and a retirement unit is given the thorough discussion it deserves in all of the papers included in this report. Included among the authors of the 12 plans were:

N. C. Cushner (Consolidated Edison of New York); J. C. Cross (Hope Natural Gas); C. D. Meginnis (Philadelphia Gas Works); W. G. Pilgrim (Peoples Gas of Chicago); H. J. Perkner (Delaware Power & Light); H. L. Dalbeck (Cambridge Gas, Mass.); W. T. Bauer (Electro Advisers, Inc.); E. F. Wresell (Northern Indiana Public Service).

In addition, papers on the maintenance of property records and plant accounting were written by J. A. Hausenbauer (Consolidated Edison); Stuart F. Kosters (Stone & Webster); and John L. Sunday (Philadelphia Electric Company).

Altogether this volume should surely prove of much assistance to all accountants, engineers, consulting engineers, accounting firms, and other executives or professionals who have any responsible contact with the increasingly important problem of installing or maintaining satisfactory property record systems.

The March of Events

FPC Hits Predecessor

DECLARING that a minor-part license issued ten years ago was arbitrary, capricious, and contrary to law, the Federal Power Commission has ordered the Pacific Gas and Electric Company to show cause by December 15, 1939, why it should not on or before January 1, 1940, apply for and accept a major license for Project No. 708 on the Stanislaus river in California near the Melones dam and reservoir. It was also ordered to show cause why proceedings should not be instituted to determine whether such minor-part license should not be revoked, rescinded, or canceled.

The commission order, among other things, stated that:

"The action of the then commission fixing the horsepower capacity of the said project at 500 horsepower, issuing a minor-part license therefor, and authorizing transfer of such minor-part license, was arbitrary, capricious, without statutory or other authority, and contrary to law," and

"The United States has thereby been deprived, in part, of its reasonable annual charges justly attaching to the said project, and further, has been deprived of its right to recapture the said Project 708 pursuant to the provisions of law applicable to a major project license, and such right of recapture and other rights of the United States, incident to a major project license, are essential and necessary to the public interest," and further states, "The licensee has violated the terms of said license by not clearing the reservoir as therein provided."

In addition the order stated that the commission on November 12, 1929, purported to issue a license for a "minor part of a complete project" to the Sierra & San Francisco Power Company on an arbitrary capacity basis of 500 horsepower, which waived various conditions required in major licenses, and contained a provision requiring the licensee to clear the reservoir serving the project. This license was later transferred to the Pacific Gas and Electric Company.

Project 708, for which this minor-part license was issued, is in reality one complete unit of development consisting of the Melones dam, reservoir, conduit, tunnel, power house, and transmission lines, with a capacity in excess of 2,000 horsepower on the basis of monthly flow and 11,000 horsepower on the basis of annual flow, the order stated.

SEC Rule Amended

AMENDMENT of Rule U-3D-12 of the Holding Company Act to provide that no company shall be exempt under its provisions after March 1, 1940, unless a statement containing certain specified information has been filed, was announced on November 9th by the Securities and Exchange Commission. The rule grants an exemption from all provisions of the act for all companies within a holding company system whose aggregate annual gross revenues from public utility operations do not exceed $350,000, and book value $1,000,000.

TVA Power Rate Basis Reduced

A NEW "yardstick" of power rates was recently established by the Tennessee Valley Authority as the result of relatively high earnings of its municipal distributors, David E. Lilienthal, power director, announced.

Mr. Lilienthal said the new rates, which constituted a reduction of 8 to 17 per cent, depending on the amount of power used, already had been in effect at Corinth, Miss., and vicinity since August 1st, and it was contemplated to extend the savings to 8 or 10 other communities immediately, and eventually to the 340,000 users of TVA power after a "test" period.

The TVA will continue to realize its rate from the communities. The municipal distributors, however, will be induced to lower their rates to consumers of 50 kilowatt hours a month, where the returns indicate that the distributor can meet all charges under the contract and set aside the proper reserve for depreciation and contingencies.

The Alcorn Electrical Membership Association in Alcorn county, Miss., which includes the town of Corinth, recently reduced its rate of 3 cents a kilowatt hour for the first 50 hours to 2½ cents. This was after it had discharged its debt and had on hand money which it could find no use for under its TVA contract, Mr. Lilienthal said.

Mr. Lilienthal said the returns on investments, less depreciation allowances, were as follows for several towns: Florence, Ala., 23.6 per cent; Tupelo, Miss., 21.6 per cent; Trenton, Tenn., 18.7 per cent; Pulaski, Tenn., 15.7 per cent; Dayton, Tenn., 12.4 per cent; and Bolivar, Tenn., 12.3 per cent. Other communities, he said, showed somewhat smaller

returns, but all were able to meet their charges.

The scale of rates for residential service for the TVA area is: First 50 kilowatt hours, 3 cents (and 2½ cents where the reduction is put into effect); next 100 kilowatt hours, 2 cents; next 250, 1 cent; next 1,000, 0.4 cents, and more than 1,400, 0.7 cents. Users in the TVA area average 1,600 kilowatt hours a year, against a national average of about 800, Mr. Lilienthal said.

Bonneville Negotiating Contracts

THE Bonneville administration recently announced it was negotiating for contracts with 11 cities in Oregon and Washington, 9 of which already have their distribution systems.

The 9 cities with distribution systems ready to take Bonneville power when transmission lines are built to them and contracts agreed upon, are Seattle, Tacoma, Centralia, and Ellensburg in Washington; and Eugene, McMinnville, Forest Grove, Canby, and Milton in Oregon, officials said.

Two other cities interested in Bonneville power are Monmouth and Vernonia, both of which are considering purchase of private distribution systems. Monmouth has offered Mountain States Power Company $37,761.30 for its local system and the city council of Vernonia has indicated its desire to acquire Oregon Gas & Electric Company facilities.

Contracts were reported being drawn for the Grays Harbor, Klickitat, and Wahkiakum county public utility districts in Washington and the Tillamook People's Utility District in Oregon. Hood River and Wasco PUD's also are hopeful of acquiring Bonneville power after negotiating for purchase of Pacific Power & Light Company facilities, and the small Wickiup district in Clatsop county is interested, Bonneville reported.

Bonneville already has signed contracts to serve Cascade Locks, the Pacific county PUD, which has an agreement to buy power company facilities, and Skamania county PUD, in which purchase of the West Coast Power Company system has been delayed by injunction, as in the Grays Harbor district.

National Defense Report Discussed

PRESIDENT Roosevelt's advisory committee on power policy met last month and discussed the report of the National Defense Power Committee preliminary to submission of this phase of the national mobilization program to President Roosevelt. The report dealt with both the expansion of plant by private utilities and the linking of various strategic cities so that ample power facilities would be available in all cities in the event of a breakdown.

The National Defense Power Committee report to the consolidated group stated that the private utility industry so far this year had placed orders for turbo-generators sufficient for an expansion of 1,500,000 kilowatts. The original program of the defense committee provided for 1,000,000-kilowatt expansion. The orders are expected to be filled and the additional capacity available over the next eighteen months.

Members of the committee said that no great difference of opinion prevailed among the committee on a national defense power program. The group selected Leland Olds, Federal Power Commission member, as vice chairman of the advisory committee which was believed to indicate that the power commission would have a great deal to do with the carrying forward of any power policy adopted by the President at the suggestion of the committee. Members of the committee stated that the whole basis of the plan presented for mobilizing electric power was coöperation between the government and the private utility industry.

FPC Orders Investigation

THE Federal Power Commission, on its own motion, recently instituted an investigation of the Cities Service Gas Company for the purpose of enabling the commission to determine whether any of the company's rates or charges in connection with the transportation or sale of natural gas, subject to the jurisdiction of the commission, are unjust, unreasonable, unduly discriminatory, or preferential.

At the same time the commission ordered that if, after a hearing has been held, the commission should find that any such rates or charges are unjust, unreasonable, unduly discriminatory or preferential, the commission shall determine and fix just and reasonable rates to be thereafter observed.

On May 1, 1939, the commission was petitioned by the Missouri Public Service Commission to institute an investigation to determine a fair and reasonable rate for natural gas sold by Cities Service Gas Company to 8 Missouri distributing companies for resale in 58 Missouri communities. The petition stated that the uniform rate of 40 cents per thousand cubic feet charged by the company to these Missouri distributors was unjust, unreasonable, unduly discriminatory, and preferential. According to the petition of the Missouri commission, an attempt to ascertain and determine what would constitute a fair and reasonable rate had been made, but these efforts were unsuccessful by reason of the interstate character of the transportation and sale of natural gas and the refusal of the Cities Service Gas Company to voluntarily furnish information and data that would enable the state commission to determine a fair rate.

Distributing companies in Missouri, to which Cities Service Gas Company sells natural gas for resale at the 40-cent rate, are: Missouri Gas & Electric Service Company, Springfield

Gas & Electric Company, Carl Junction Gas Company, Citizens Gas Company, City Light & Traction Company, Kansas City Gas Company, Interstate Gas Company, and Gas Service Company.

The Federal Power Commission in ordering the investigation found that "it is necessary and proper, in the public interest, and to aid in the enforcement of the provisions of the Natural Gas Act, that an investigation be instituted by the Federal Power Commission, on its own motion, into and concerning all rates, charges, or classifications demanded, observed, charged, or collected by the Cities Service Gas Company, in connection with any transportation or sale of natural gas, subject to the jurisdiction of the commission, and any rules, regulations, practices, or contracts, affecting such rates, charges, or classifications."

California

Power Distribution Studied

DECISION to draft new legislation to authorize a means of financing distribution facilities for the marketing of Central valley power was reached at a meeting late last month of the committee appointed by Governor Culbert L. Olson. The committee was scheduled to meet this month with Frank Clark, state director of public works and chairman of the California Water Project Authority, to begin formulating the legislation.

Whether the effort to pass a new measure, in lieu of the Pierovich revenue bond bill which was killed at the last session, at the special session or wait until the state legislature convenes in January, 1941, will be left to the governor.

Present plans for the Shasta dam power system merely provide for the transmission of the current, at a high voltage, to a plant near Concord and do not include distribution lines to transmit the power to various localities.

Committee members said consideration also would have to be given to the governor's proposal of a few months ago for the construction of a steam stand-by plant.

Bus Proposal on Ballot

THE Los Angeles city council last month formally ordered on the December 12th special election ballot the initiative ordinance creating a municipally owned bus system.

A report of the legislative committee was read proposing submission of an alternative plan which "eliminates objectionable features" of the initiative, according to Councilman Roy Hampton, committee chairman.

Ventura Plant Defeated

MUNICIPAL ownership election results in Ventura on November 8th on the $1,200,000 bond issue were recently reported as 3 to 1 against construction of a power plant. A proposed charter amendment to allow revenue bonds also defeated by over 3 to 1.

Florida

Plant Fund Approved

HOMESTEAD'S application for a Reconstruction Finance Corporation loan of $75,000 for enlarging the municipal light and water plant was approved last month, councilmen were informed by Congressmen at Washington.

During peak-load periods present engine capacity has been used day and night, with no reserve in case of a breakdown, it was said. The loan will be used to buy a third 600-horsepower Diesel engine, necessary switchboards, and lightning arresters. The present building will be enlarged one-third in size, Gordon W. Ivey, plant superintendent, said.

Indiana

City Forbidden to Invest Money

MONEY from the depreciation reserve fund of municipally owned utilities must be kept in a public depository and may not legally be invested in securities, bonds, loans, or other investments, Judge John W. Macy ruled in Randolph Circuit Court on October 26th.

His decision was made on a declaratory judgment brought by R. G. Leeds, of Richmond, against the Richmond city council and City Treasurer Earl Freeman. The case was venued to Winchester from Richmond.

Leeds' suit was the result of action by the

city of Richmond last fall in authorizing the sale of government bonds in the depreciation reserve fund of the municipal electric light plant to buy civil city bonds for construction of a gymnasium-auditorium for the high school.

Iowa

Ruling Affects Appliances

STATE Attorney General Fred Everett's office on November 3rd ruled that the merchandise stock, such as gas and electrical appliances, sold by public utilities should be assessed for taxation purposes by local assessors.

The opinion by John Mulroney, assistant attorney general, said such merchandise does not come within the realm of public utility property assessments the state tax commission is authorized to make.

Michigan

Gas Rate Change Asked

A REQUEST that the Michigan Consolidated Gas Company immediately abolish the minimum payment plan of the Detroit gas rate schedule was made recently by Mayor Reading in a letter to William G. Woolfolk, gas company president.

Under this plan, Reading stated in his letter, small gas users in the Detroit area are paying, in excess charges, approximately $1,500,000 a year. He pointed out that the minimum payment plan was to continue only during the "development period" following the introduction in Detroit of natural gas some time ago.

A hearing on the Detroit gas rate schedule is under way in Lansing and is expected to continue for several months. When the hearing started, city attorneys asked the state public service commission to abolish the minimum payment plan pending the hearing on the general rate schedule. In his recent letter, Reading said that if the gas company complied with this request, it would be "a fair thing and a gesture of good will."

Missouri

Gas Collections Impounded

THE Laclede Gas Light Company of St. Louis on November 1st was ordered by Circuit Judge Nike G. Sevier to impound with the court, on motion of the city, $49,008, representing gas collections last July and August in excess of rates fixed in a 1934 valuation case. This sum was to be added to $1,424,861 impounded previously in the litigation over a 6 per cent rate reduction.

The city is seeking to have the entire amount restored to gas users, while the company is trying to obtain all of the fund. Judge Sevier took under advisement, after a hearing, another motion by the city to strike from the company's petition for restoration to it of the fund several statements involving interpretation of state public service commission and supreme court rulings.

The rate reduction is no longer in controversy, a new schedule having been approved.

Nebraska

Hydros Apply to RFC

NEBRASKA's public hydroelectric projects recently renewed efforts to buy private power facilities. The Platte Valley Public Power and Irrigation District applied for a $6,000,000 Reconstruction Finance Corporation loan, President Horace Cary announced last month at Columbus, to purchase parts of five private firms.

An RFC engineer already has investigated the proposed sites and the corporation was reported to be studying the proposal.

R. O. Canaday, secretary of the Central Nebraska Public Power and Irrigation District, said that Tri-County was considering a similar effort but planned no action until the proposal had been discussed with municipalities in the Tri-County area.

Coördinated with the Platte valley appli-

cation, Cary said, would be an RFC application by the Middle Loup Public Power and Irrigation District of Loup City.

Cary said his district was seeking to buy all or part of the North Platte division of the Northwestern Public Service Company; the Central Power Company of Grand Island; the part of the Western Public Service Company of Scottsbluff not connected financially with reclamation service projects; the Gothenburg Light & Power Company, and the Nebraska Light & Power Company of McCook. Negotiations were based on the $6,000,000 figure.

R. H. Willis, chief of the state irrigation bureau, on October 30th announced that the canal of the Platte Valley Public Power District at the Keystone diversion dam on the North Platte river had been closed. A short time before the bureau authorized the district to take 500 second feet of water from the Platte to raise the level of their supply reservoir at Sutherland in order to get water into their regulating reservoir so their power plant could be operated.

Willis said that while the flow of the river was 1,500 second feet, there still was not enough water to take care of the needs of irrigation districts and companies that hold priority rights over the Platte Valley district. During the few days water was diverted, 2,700 acre-feet were delivered to the Sutherland reservoir but it was not sufficient to permit them to operate their power plant. Willis said they would not be able to divert any more water to the district until the needs of irrigators were fulfilled, which, he said, would probably not be until cold weather prevented flooding of land.

New Jersey

Rate Cut Announced

REDUCTIONS in electric rates by the Public Service Electric & Gas Company, effective January 1st, next, were announced recently by Harry Bacharach, president of the state board of public utility commissioners, who said the reductions would total $1,100,700 annually.

The reductions were said to be the result of negotiations with the Public Service Company which were started by the state board early this summer. It was announced from the state utility board office at Trenton that a revised schedule of these reductions would be submitted for approval soon and would become effective on January 1st with bills rendered for metered current by the company in regular course after that date, covering consumption from December, 1939, meter readings.

In the revised schedule, reductions will be made in the domestic, commercial, and street lighting rates, according to the commission announcement.

New York

Demand Charge for Gas Ended

THE state public service commission recently announced that it had ordered all gas corporations in New York state to eliminate all demand charges from their rate schedules which do not make gas available without additional charge. The gas companies were directed by the commission's orders to remove such provisions from their tariffs by next February 1st.

The commission by a 4-to-1 vote determined that the levying of a demand charge for gas where the demand charge does not make gas available without additional charges, is illegal. Chairman Milo R. Maltbie and Commissioners George R. Lunn, Neal Brewster, and Maurice C. Burritt voted for this finding, with Commissioner George R. Van Namee dissenting.

A demand charge is based on the capacity of the gas burner and is paid whenever the burner is employed, regardless of the amount of gas used. In addition to this basic demand charge, the consumer pays the commodity rate for the volume of gas used. Where there is no demand charge, the consumer pays the full commodity rate, but where a demand charge is paid, the commodity rate is much smaller and is fixed according to formula.

Ohio

Files Supplemental Brief

CONTENDING that the Columbia Gas & Electric Corporation "has offered no valid reasons" for the approval of its plan of integration in keeping with the Public Utility Holding Company Act of 1935, the state utilities commission on November 1st filed with

the Securities and Exchange Commission at Washington a supplemental brief urging the inclusion of all of the company's holdings.

The state commission's original brief, filed last May, merely indicated the commission's policy and its interest in the supply and rates of natural gas for consumption in Ohio.

The supplemental brief attacked the Columbia plan, which excluded approximately 17 per cent of its holdings, with the contention that the matter of integration or the elimination of intermediate holding companies cannot be settled definitely until the utility presents to the SEC a plan which makes no exception in the listing of its holdings.

The excluded companies classified in two groups, including the Texas Pipe Line companies and the Kentucky company, were left out of Columbia's plan on the grounds that practical reasons made it desirable for the system to bring itself into compliance with the Holding Company Act as well as because of pending litigation involving the excluded companies.

Referring to the utilities' claim of pending litigation as setting up a legal barrier precluding their inclusion in the plan, the brief questioned the method by which intervening parties could present adequately the claims and interest of those whom they represent. It pointed out further that in Toledo and Cincinnati the cities were served with gas from excluded companies and that approval of the present plan "would settle nothing as far as those cities are concerned, on any question of the supply of gas or the price to be paid."

Oklahoma

Governor Demands Payment

THE state and the Grand River Dam Authority remained far apart, it was reported recently, in the dispute over payment of the cost of rerouting highways in the dam area, as Governor Phillips declared the authority's latest offer "doesn't even reach the level of respectable nonsense."

As a counter proposal, Ray McNaughton, chairman of the authority's board of directors, proposed that the state pay the authority $165,458. His claim was based on the contention the authority constructed a bridge near Grove costing $368,083, while road damage would amount only to $203,625. The authority claims an agreement with the old highway commission under which damage to be caused by inundation of roads would be offset through construction of the bridge.

Governor Phillips and the state highway commission were demanding that the authority pay the state $869,736 as its share of the cost of rerouting highways.

W. R. Holway, chief engineer of the Grand River Dam Authority, had previously warned authority members that manufacture of power might be delayed until 1941 unless land needed for the reservoir basin was obtained soon. Holway said the main dam could be completed by February 1st. He suggested an immediate increase in land-buying personnel.

General Manager R. V. L. Wright of the GRDA on October 31st confirmed reports of negotiations between the authority and the Public Service Company of Oklahoma relative to sale of power produced at the $20,000,000 hydroelectric project. Wright also declared the dam could "produce sufficient power to supply all the needs of the city of Tulsa and have some left over." His statement came as a reply to one by Governor Phillips, who had said that "most people lose sight of the fact that Grand river dam won't even produce sufficient power for the city of Tulsa."

Wright said Tulsa's peak load was 37,000 kilowatts, while the dam's peak production would be 60,000 kilowatts. He said that among ways to dispose of power were:

Construction of transmission lines in eastern Oklahoma in direct competition with existing utilities; sale of power to a few of the larger cities and towns in the GRDA area, or sale of part of the power to existing utilities under an agreement that utilities would pass on benefits of cheaper electricity to consumers.

Oregon

Discuss Dam Power

THE problem of getting Bonneville power to the consumer with the least possible delay was discussed at a conference at Salem last month, attended by Governor Charles A. Sprague, Franklin T. Griffith, president of the Portland General Electric Company, and Ormond R. Bean, state utilities commissioner. Governor Sprague said his principal interest in the conference was "to determine when the people would be able to get Bonneville power."

Griffith told Governor Sprague that the Portland General Electric Company had made every effort to sign a contract with the Federal government so that the company might retail some of the power. Griffith continued:

"We are ready to go as soon as we can enter into a contract with the government. We have

been negotiating ever since the Bonneville project got under way, but we have not been successful. We would be able to retail the power cheaply as soon as we get it."

Commissioner Bean refused to comment on the conference. He referred, however, to a recent statement issued by his department showing that the average charge for domestic energy in Oregon was reduced during 1938 from 2.85 cents to 2.73 cents a kilowatt hour. Bean said this rate was "one of the lowest in the United States."

Pennsylvania

Gas Rate Slash Set

THE average gas consumer of Philadelphia will get a reduction of about 12 cents in his monthly bill on January 1st, it was indicated recently. The gas commission will order a cut of at least 5 cents per thousand cubic feet in the rate charged the city's 450,000 domestic consumers at its meeting late this month, it was reported.

The reduction, in line with the promise of Chairman George Maxman after last month's meeting—when the rate for gas used in heating homes was cut—would apply to the first 5,000 feet consumed, it was understood. Thus, where the present rate is 90 cents per thousand for the first 2,000 cubic feet, the new rate would be 85 cents. For the next 3,000, the present rate of 85 cents would be cut to 80 per thousand.

The commission was understood to be planning to assess a blanket minimum charge of 75 cents a month. No such minimum is now in effect.

Utah

Municipal Officials Organize

ORGANIZATION of the Utah Municipal Power and Light Association, composed of representatives of municipalities "owning, or interested in owning their own power plants," was effected October 27th by twenty-four officials from various Utah cities and towns at a meeting at Murray.

J. Clifford Hansen, Murray city commissioner, was elected president.

Plant Elections Break Even

VOTERS of Ogden on November 8th turned down, by a vote of 9,507 to 5,780, a proposal to construct a municipally owned electric plant. Ogden is served by the Utah Power & Light Company, a subsidiary of Electric Power & Light Company, which in turn is a unit in the Electric Bond and Share system.

In Provo, however, the Utah Power & Light Company was denied a 10-year franchise extension, and the voters refused to reverse ordinances passed in October, 1936, under which $850,000 revenue bonds were approved to construct a municipal plant. This plant, for which a PWA grant was obtained some months ago, has been partially built.

The proposition in Ogden called for a $3,500,000 bond issue, proceeds from which would have gone toward construction of a municipal power plant and distribution system. It was the third time within fourteen months that the citizens of Ogden had turned down municipal utility ownership.

Wisconsin

Commercial Rates Cut

A REDUCTION of $126,300 a year in commercial electric rates of the Wisconsin Electric Power Company, Milwaukee, effective after November meter readings, was announced on October 28th by the commission.

The reduction was negotiated, the state commission said, after the commission's research department pointed out that reports of the utility indicated earnings in excess of the 6 per cent maximum return allowed by law. At a conference recently, the commission added, company officials offered to take a reduction of $126,300.

The commission approved the cut with the understanding that as soon as an audit of the utility's 1939 operations had been made further negotiations looking toward additional reductions would be undertaken.

All but $3,380 of the reduction went to stores, offices, and other commercial users of electricity. The $3,380 will be a reduction to state departments and municipalities.

The Latest Utility Rulings

Coal, Labor, and Railroad Interests Not Protected against Natural Gas Invasion

THE duty of the Federal Power Commission is to safeguard the convenience and necessity of the public as it may be affected by proposed extensions or construction of facilities for transportation of natural gas to markets in which natural gas is already being served by another natural gas company. For this reason, in the opinion of the commission, coal, labor, and railroad interests cannot require the commission to consider the adverse effect upon their interests of the authorization of proposed natural gas pipe lines. The Natural Gas Act, says the commission, does not give it unlimited jurisdiction over all proposed construction of natural gas facilities, and Congress did not intend the commission generally to weigh the broad social and economic effect of the use of various fuels.

This ruling was made on applications by two natural gas companies for authority to extend pipe lines to serve new territory. The necessity for the service was recognized by the commission, but the applications were held in abeyance in order to permit the applicants to show that they would be financially able to carry out their enterprises. The commission said:

> We believe that applicants for certificates of convenience and necessity should show that they possess adequate financial resources with which to construct the facilities for which certificates are sought. Other regulatory commissions have denied applications for certificates where the applicants have been unable to show adequate financial resources. *Re* Niagara River & E. R. Co. (N. Y.) P.U.R. 1917A, 278; *Re* Buffalo Jitney Owners Asso. (N. Y.) P.U.R. 1923C, 645; *Re* Wyoming-Montana Pipe Line Co. (Wyo.) P.U.R. 1931B, 63; see also *Re* Carver (Colo.) P.U.R. 1923B, 242. When we consider that one effect of the issuance of a certificate to construct and operate facilities to and in a given area is to preclude from that territory other construction or operation except under a certificate issued by us, the necessity that the present applicants be financially able to consummate their proposed construction becomes the more apparent.

The applicants had stated their intention to rely for their finances entirely upon the successful disposition of applications each had filed with the Reconstruction Finance Corporation because the projects were of such magnitude that the ordinary financial channels were closed; that the sale of securities to the general public in customary fashion was impossible for this type of project. The commission did not pass comment upon this latter contention other than to note that the companies had not seriously made any attempt to finance through such channels.

Neither applicant had submitted any firm commitment from the Reconstruction Finance Corporation that that organization would loan the necessary funds. The record was silent upon the subject of the terms, conditions, type of securities, method of repayment, amount, and other details of any financing program.

Under these circumstances the commission declared that it could justifiably deny the applications, and certainly it could not authorize the issuance of unconditional certificates or, without assurance on this vital point, make a finding that the present or future public convenience and necessity required or would require the construction and operation of the proposed facilities. *Re Kansas Pipe Line & Gas Co. et al. (Docket Nos. G-106, G-119, Opinion No. 39).*

Regulatory Power over Service Abandonment Supersedes Bankruptcy Court Jurisdiction

THE United States Supreme Court on November 6th decided in favor of the Massachusetts Department of Public Utilities a controversy over jurisdiction which a Federal bankruptcy court had attempted to exercise. The question was whether the bankruptcy court has authority to direct a utility company in receivership to discontinue the rendition of an unprofitable branch of its public service without consent of state regulatory authorities.

The decision resulted from an attempt by the New York, New Haven and Hartford Railroad Company (of which Palmer and others are the trustees in bankruptcy) to abandon 88 unprofitable passenger stations. The trustees originally made their request to the Massachusetts Department of Public Utilities in December, 1937 (two years after they had filed with the Federal court a petition for reorganization under § 77 of the United States Bankruptcy Act). While the matter was still pending before the Massachusetts board, the creditors of the railroad asked the Federal bankruptcy court to direct the trustees to discontinue these stations in order to avoid the wasting of assets through unprofitable operations. The district judge of the Federal bankruptcy court took the view that he was authorized under § 77 of the Bankruptcy Act to enter such an order and proceeded to do so. Whereupon, the state of Massachusetts successfully appealed to the United States Circuit Court on the grounds that the district judge had exceeded his jurisdiction. The trustees appealed from this decision.

The Supreme Court's opinion by Mr. Justice Frankfurter, affirming the circuit court, is to the general effect that where Federal bankruptcy law "intersects the regulatory systems of the states," the latter power is paramount because it involves the public interest as distinguished from the creditor and debtor interest for which the bankruptcy courts are solely responsible. *Palmer et al. v. The Commonwealth of Massachusetts.*

Federal Power Commission Asserts Retroactive Jurisdiction Over Long-established Power Site

THE Federal Power Commission on November 3rd ordered the Pennsylvania Water & Power Company to obtain a license for its Holtwood project (a dam and power plant on the Susquehanna river at Holtwood, Pa.), although it was constructed prior to the enactment of the original Federal Water Power Act in 1920. The commission's action was based upon the finding that the Susquehanna river is a navigable stream and that the Holtwood plant was constructed without any permit or valid preëxisting right-of-way granted before 1920.

The commission further found that "this project was constructed between 1905-09 without affirmative consent of Congress." The commission's conclusion was as follows:

> The 32-mile stretch of the Susquehanna river below the Safe Harbor dam is navigable water within the meaning of § 3(8) of the Federal Power Act, and the Holtwood project is located across, along, and in navigable water of the United States. The maintenance and operation of the project without a license is in violation of § 23(b) of the act. The respondent should, therefore, be required to apply for and obtain a license pursuant to the act and the commission's rules and regulations.

The opinion resulted from an investigation started by the FPC about two years ago, looking to the extension of Federal jurisdiction over hydroelectric plants constructed before 1920, when the commission was established by the first Federal Water Power Act. *In Re Pennsylvania Water & Power Co., Docket No. IT-5524, Opinion No. 40.*

Managerial Discretion As to Expenses

NEITHER a court nor a commission can substitute its judgment for that of the officers of a utility company. After announcing this rule in a telephone rate case, the Minnesota commission continued:

> In the absence of a showing that the management has been extravagant, improvident, or wasteful in the operation of the plant, it is considered that the commission may not ignore actual expenses. Even if such a showing could be made in this case, and several hundred dollars deducted from the operating expenses, the net income would still be short of paying a reasonable return upon the fair value of the property.

Re Hendrum Telephone Co. (M-2466).

Right to Alter Service Area

THE Colorado commission, in approving service under the terms of stipulations entered into between a water company and an applicant for service after the initiation of proceedings, discussed the question of what territory a water company was required to serve. The company under investigation had filed a rate schedule providing that territory supplied by the company was what is generally known as Cheyenne Cañon and Ivywild, a suburban district to the south and adjacent to the city of Colorado Springs.

The commission said this provision, which is general and indefinite, was intended to prescribe the territory that the utility concerned undertook to serve, and impliedly represented that the company had provided, or would provide, the necessary facilities to serve that territory. The commission continued:

> If it is impossible or impracticable to secure the necessary facilities, then the company, at the time of filing, or subsequently, if it determines that it is unable to supply the demand which has developed, should limit its territories in accordance with its ability to serve. The right of an established utility (and respondent was serving prior to enactment of Public Utilities Act), to decrease or increase its territory would be a matter for the commission to determine, after investigation, upon filing of a proper application for that purpose.

Three Eagles Co. v. Brookside Water Co. (Case Nos. 4752, 4753, Decision No. 13991).

Wholesale Rates to Rural Coöperatives Not Discriminatory

A COMPLAINT by a wholesale customer of an electric company alleging discrimination against him and in favor of rural coöperative associations was dismissed by the Pennsylvania commission on the ground that differences in the types of service justified different rates.

The rate schedule available to rural coöperative, nonprofit associations was applicable only to associations taking their entire requirements from the utility company. It applied separately to each point of delivery. All customers of the coöperatives were rural. Coöperatives availing themselves of this rate were required to install all fuses, disconnecting switches, transformers, and other apparatus at the point of connection.

On the other hand, the energy furnished to the wholesale customer was delivered at five delivery points. His meter readings were totaled, combining energy in one total amount and demands in one total amount, and charges were computed as if energy were delivered at one point. Distribution to the public was through ten incorporated utilities and an individual company, all owned and con-

trolled by the wholesale power customer. A part of the ultimate customers were rural, while others were not. Service of the power customer was taken at the utility's line voltage and no transforming or switching facilities except meters were required, with one exception. Minimum demands and maximum demands at the five points of delivery were found not to be coincident.

There were held to be basic differences in the type of service, and, as the public utility commission declared in the following statement:

> . . . the conclusion is inescapable that the character of service rendered the complainant at the five points of delivery and the class of consumers served by him through his wholly owned 11 electric utilities are dissimilar to the character of service and class of consumers of the coöperative association—first, upon the class and type of consumers served; second, with respect to the requirement of the coöperative's providing its own transforming and appurtenant equipment; and third, with respect to the question of minimum and maximum demand imposed upon respondent's system.

Carpenter v. Pennsylvania Electric Co. (Complaint Docket No. 12557).

Scope of Proceeding Limited by Application

THE Montana commission held that it has no authority to grant any right other than prayed for in an application for a certificate of public convenience and necessity to operate as a motor carrier. It was pointed out that the statute definitely sets forth what an application must contain and requires that notice be given to motor carriers and other parties of a hearing on such an application.

The commission said:

> Persons receiving the notice of such hearing are entitled to know just what rights the applicant requests, and in our opinion we would violate § 3847.11 R.C.M. 1935 if we were to consider and grant rights not asked for by the applicant in his application filed with us. It must at all times be remembered that this board is merely an administrative agency and thus we must administer the statutes relating to motor carriers as given us by the Montana legislature.

The application in this case was denied on the ground that the applicant had failed to show where the present transportation service was inadequate or that he could render the public greater convenience and service than was being rendered by existing transportation agencies. *Re Cosens (Docket No. 3021, Report and Order No. 109).*

Summary of Reproduction Cost Estimate Excluded As Hearsay

IN cases as serious as rate cases, evidence before it is admitted should be at least competent, and where a document is introduced the parties should have the right to cross-examine its authors. On this ground the Montana commission held that a summary of reproduction cost in a valuation proceeding for rate-making purposes should not be considered, since it was "nothing more than hearsay."

The general rule was stated that all evidence is called hearsay when its probative force depends in whole or in part on the competency and credibility of some person other than the witness by whom it is sought to produce it. Here neither the parties nor the commission had the engineers of the appraisal firm to cross-examine as to the facts upon which their summary was based.

Other important questions considered by the commission related to depreciation, working capital, intangibles, and notice of rate proceedings. An objection to the adequacy of the notice to the utility

was overruled, the commission stating:

> What constitutes reasonable notice to the public and the utility before a hearing in our opinion is discretionary with the commission, provided, however, that notice is at least given in strict conformity to the statutes. . . .
>
> A notice of public hearing on utility rates should apprize the public and the utility as to what is in issue. However, such a notice in our opinion is not governed by the technical rules of pleading. . . .
>
> The utility concerned here has been engaged in various rate hearings and it is significant that it is the utility who is complaining about the notice rather than members of the public who are not generally engaged in rate hearings as is this particular utility. Certainly this utility and its counsel should know what evidence to present at a rate hearing under such a notice as given in this case. We do not believe that a notice of a public hearing concerning rates should contain views of the commission as to what evidence the utility or the public should offer relative to the reasonableness or unreasonableness of rates.

Franchises, it was held, should not be considered in arriving at the rate base. Intangibles involving preliminary and organization expense relating to the organization and establishment of the utility, it was said, should not be capitalized or carried into the rate base, although they might be properly amortized over a period of years as an expense item. A proper amount of working capital was held to be approximately one-eighth of the annual operating expenses of the utility.

The percentage allowance for depreciation, in the opinion of the commission, must be determined upon the actual value of the property of the utility and not upon its original cost or gross revenues, and depreciation should always be considered in determining the value of the utility's property for rate-making purposes. On the question of depreciation, the commission continued:

> . . . the utility is using a part of its depreciation money for constructing additions to its plant. The fallacy of this procedure is self-apparent. If a utility is entitled to procure from the ratepayers the money with which to construct its plant or additions to the same, it would follow that, since the ratepayers are contributing capital to the enterprise, they have an equitable interest in the utility and hence the situation is analogous to a coöperative enterprise. Such is not the intention of the law relating to a utility such as we have here.

Re Montana - Dakota Utilities Co. (Docket Nos. 3065-3067, Report and Order No. 1749).

Responsibility for Fire Hydrant Service

THE Montana commission ordered the installation of a water main and additional fire hydrants where the evidence showed that a utility was not providing sufficient size mains for fire protection. The commission expressed the belief that the utility, in holding itself out to serve water in case of fire, thereby obligated itself to install and maintain proper size mains to carry a sufficient supply of water in case of fire.

There was some controversy as to whether or not the utility or the fire department should maintain fire hydrants installed and owned by the fire department. The commission was of the opinion that the fire department was fully and alone responsible for any damage that might accrue to these hydrants by third parties. *Re Gardiner Electric Light & Water Co. (Docket No. 3058, Report and Order No. 1748).*

Return Dependent on Adequate Service

THE Missouri commission, in ordering an improvement of telephone service and the improvement of public relations between the utility owner and the public, said that under the law the operator of a public utility takes upon

himself the obligation of serving the public convenience and necessity by the furnishing of service commensurate with the needs of that community. The commission continued:

> The law requires if he does so he is entitled to a reasonable return on the fair value of the property used in furnishing that service. On the other hand, if he does not serve the public convenience and necessity he is not entitled to a return on the value of the property used because it is not devoted to the use of the public in conformity with the spirit of the law governing such matters.

City of Laclede v. Laclede Telephone Co. (Case No. 9754).

Reduction in Water Rates Ordered

THE Montana commission held that rates for water service should be reduced where the utility was earning 10.36 per cent, which the commission considered excessive. Rates were established to provide a return of about 6 per cent upon the present value of the property, the commission stating:

> We have heretofore held that a utility is entitled to earn a fair and reasonable return on the present value of its property used and useful in the public service.

Construction and installation of a water storage tank was also ordered. The commission said that it must always be remembered that a utility obligates itself to render to its patrons good and reasonable service because of rates charged its patrons for such service. *Re Scott Water Plant (Docket No. 3057, Report and Order No. 1747).*

Minimum Rates for Motor Carriers

THE California commission, in establishing statewide minimum rates for the transportation of household goods by highway and city carriers, made the following observation as to cost studies which had been presented to the commission for such purpose:

> Manifestly, minimum rates should not be designed to protect the revenues of all carriers who choose to engage in given transportation, without regard to the facilities reasonably necessary to serve the public adequately and well, or to the efficiency of the operations of existing carriers. Nor should minimum rates be designed to cover expedited or unusual services to the prejudice of persons not requiring such service. On the other hand, theoretical cost estimates should not be accepted in preference to costs drawn from carriers' records, where it is shown that the carrier operates in a reasonably efficient manner and performs only the usual or ordinary type of service.

The commission derived its rates from a consideration of all the evidence of record so as to give recognition, in addition to the cost of performing the service and the value of the facilities reasonably necessary to perform the service, to the value of the service and the other recognized rate-making elements. It was said that minimum rates, not reflecting economies which can be effected, encourage duplication of facilities and wasteful use thereof and also add to the congestion of the highways, tending to defeat the purposes of the Highway Carriers' Act. *Re Rates, Rules, and Regulations of Radial Highway Common Carriers (Decision No. 32325, Case Nos. 4086, 4099).*

Other Important Rulings

THE supreme judicial court of Maine held that contract carriers, transporting merchandise by motor vehicle from a warehouse to the retail stores of a

corporation under contract, do not compete with common motor carriers within the meaning of the statute requiring the commission to prescribe rules and regulations covering the operation of contract carriers in competition with common carriers over the state highways, as well as minimum rates to be charged by such contract carriers not less than the rates charged by common carriers for substantially the same service. *Public Utilities Commission v. Utterstrom Brothers, 8 A. (2d) 207.*

The railroad commission of California held that it is a well-established principle that in the absence of statutory restrictions to the contrary, common carriers have the right to establish rates which are less than maximum reasonable rates, provided such rates are not so low as to cast a burden on other traffic, and provided that no discrimination results. *California Portland Cement Co. v. Southern P. Co. (Decision No. 32280, Cases Nos. 4425, 4427, 4428, 4430).*

The Interstate Commerce Commission may permit the abandonment, by an interstate carrier, of a portion of a line of railroad chartered by a state without a showing that the operation of the entire line, and not merely the portion sought to be abandoned, constitutes a burden upon interstate commerce, it was held by the United States District Court. *State of Georgia v. United States et al. 28 F. Supp. 749.*

The Pennsylvania Superior Court held that an existing carrier was not deprived of his rights under the state and Federal Constitutions by being deprived of a full and fair hearing before the granting of a certificate to a competing carrier, where he had notice of the hearing, was represented by counsel, had ample opportunity to present evidence and to examine witnesses, and filed a written brief but made no request for oral argument. *Schuylkill Valley Lines, Inc. v. Pennsylvania Public Utility Commission, 8 A. (2d) 487.*

The Wisconsin commission, in determining just compensation to be paid for acquisition of utility property by a municipality, held that evidence as to earning capacity of the utility was an important consideration and that the allowance for going value should be based chiefly upon a consideration of the evidence tending to show what the business of the utility as such was worth. *Re City Water Works Co. (2-U-1293).*

A public utility's duty to furnish service is primarily one owing to the public which it serves rather than the municipal corporation, which is but the public's contracting agency, the court of appeals of Ohio held; and the statutes giving to the city solicitor power to enforce contracts creating a public duty are not sufficiently exclusive to deny the right of a resident elector and consumer to sue, a right he previously possessed under the common law. *Maxwell v. Ohio Fuel Gas Co. 22 N.E. (2d) 639.*

The West Virginia commission, in denying a permit to operate a taxicab service, said that the commission could not grant authority unless it found that public convenience and necessity required such service, that existing service was inadequate, and that existing carriers had had a reasonable opportunity to remedy such inadequacy but failed to do so. *Re Myers (Case No. 458).*

The supreme court of appeals of Virginia held that a public utility company which is a citizen and taxpayer of a municipality, when confronted with the proposition that an illegal election for the issuance of bonds for construction of a municipal plant has been held and the issuance of the bonds will result in the imposition of an illegal tax burden upon the company, has the right of election to proceed either in equity to enjoin the issuance of the bonds or to proceed by filing a petition in the pending matter. *Appalachian Electric Power Co. v. Galax et al. 4 S.E. (2d) 390.*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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Points of Special Interest

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TITLES

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5. A knowledge of the purpose for which land has been purchased or its general adaptability to the operations of a public utility has nothing to do with its fair market value, p. 204.

Valuation, § 263 — Land — Increments — Plottage value.

6. An increment for plottage value cannot be added to the valuation of land of public utilities, p. 204.

Valuation, § 379 — Cost of easements — Fair market value.

7. The cost of easements acquired by a public utility appears to be the best measure of their present cost in determining the fair market value of such easements, p. 205.

Valuation, § 153 — Reproduction cost — Overheads — Performance bond.

8. The Commission deems a 1 per cent allowance for performance bond a proper percentage for construction work performed for utilities, in estimating the reproduction cost of utility property, p. 207.

Valuation, § 80 — Reproduction cost estimate — Labor cost — Pole line construction.

9. Common labor would be used economically in pole line construction in event of complete reconstruction of an electric utility, p. 208.

Valuation, § 413 — Evidence — Unit costs — Testimony by engineers.

10. The Commission engineers' background of construction costs, as gained from the appraisal of most of the electric utility properties in the state, was held to relieve unit costs they had developed for an appraisal from the charge of being entirely theoretical, where it was contended that costs developed by company engineers were based upon actual experience, p. 208.

Valuation, § 413 — Labor costs — Estimates.

11. Manufacturers who, as a rule, have no specific information regarding circumstances surrounding the installation of items of equipment for a public utility and who have limited knowledge of local conditions, of labor rates, or of other circumstances which may affect the cost of the erection, are not in a position to make an accurate estimate of the cost thereof and are prone to make labor estimates more than ample, p. 209.

Valuation, § 80 — Reproduction cost — Labor cost — Utility plant piping.

12. Development of 37 per cent of the cost of materials as the labor cost for the erection of plant piping, from a study of a cost plus job which employed a large number of journeymen steamfitters with a correspondingly low percentage of helpers and common laborers when the plant was in operation, produces too high a percentage for use in reproduction cost estimates, p. 209.

Valuation, § 134 — Supervision and inspection — Blanket application.

13. A blanket application of a percentage to all labor, material, and contract items in making an allowance for supervision and inspection is erroneous, since supervision is closely related to the quantity of labor involved and is not dependent upon the cost of the materials, p. 210.

Valuation, § 153 — Direct overheads — Job plant expense.

14. Job plant expense, including cost of construction of plant and temporary buildings such as watchmen's shelter, blacksmith and machine shops, and railroad tracks and roads for construction purposes only, as well as construction equipment, is properly included in reproduction cost, p. 211.

Valuation, § 120 — Overheads — General expense.

15. The item of general expense including the cost of setting up and demobilizing a construction organization is improperly included in estimating the reproduction cost of an electric plant and system when it duplicates other items of direct and general overheads, p. 211.

Valuation, § 193 — Property not used.

16. A rate base should include only such property as is actually in use or about to be used imminently, p. 213.

Valuation, § 213 — Property used in public service — Future use.

17. Utility property deemed to be used in public service for rate base purposes includes only that property actually used in public service on the appraisal date, or which is needed for adequate standby service or required for prospective expansion in business in the not-too-distant future, p. 213.

Valuation, § 201 — Property not used — Property due for retirement.

18. All utility property due for retirement is properly classified as not used in public service, p. 213.

Valuation, § 215 — Unused property — Land and buildings.

19. A structure and the land upon which it rests form a unit for allocation to property not used or useful, and an allocation of the building is also applicable to the land, p. 214.

Valuation, § 215 — Land used in public service — Test of reasonableness.

20. The only test the Commission can make in determining what land is used in public service is the one of reasonableness, p. 217.

Valuation, § 216 — Property used in public service — Site.

21. A power plant site which is approximately two blocks wide by five blocks long should not be pared down exactly to the occupied position in order to determine what land is used in public service, p. 217.

Valuation, § 213 — Property for future use — Leeway in operation.

22. The leeway to which a utility company is entitled in the operation of its plant should not result in an investment in plant capacity far in excess of the anticipated demands of the present and near future, p. 217.

Valuation, § 215 — Future rate base — Nonused property.

23. Presently nonused land and buildings of a utility company should not be included in a future rate base, p. 217.

Valuation, § 215 — Property not used — Real estate and equipment.

24. The theory which allocates a portion of a utility company's building and land to "not used in public service" when occupied by nonused equipment is correct, p. 217.

Apportionment, § 55 — Electric and heating property.

25. A correct allocation of a utility company's boiler plant for rate base purposes is one that considers the maximum demands of both the electric and steam heating departments, p. 218.

Valuation, § 202 — Unused property — Electric and steam departments.

26. A portion of a structure occupied by nonused electric equipment should not be classified as useful steam-heating property merely because electric equipment which occupied a portion of the building has outlived its economic usefulness, p. 219.

Valuation, § 205 — Unused property — Allocation of property.

27. It was held proper to allocate all of a building used to house electric generating equipment as property not used in public service and to include the balance as property used in the public service for the steam-heat department, where the first floor of the building contained abandoned electric equipment and the second floor was occupied and used as the steam-heating repair shop and miscellaneous shop, p. 219.

Valuation, § 215 — Unused property — Parking lots.

28. A customers' parking lot owned by an electric company and located adjacent to the company's general office building should not be considered in determining a rate base unless such lot is generally needed for the operation of the general office building, in which case the fair market value of the land might be included in the rate base as used and useful property, p. 222.

Valuation, § 144 — General overheads — Preliminary and organization expenses.

29. An overhead allowance of 1 per cent was made for preliminary and organization expense, p. 224.

Valuation, § 142 — General overheads — Legal expenses.

30. An overhead allowance of .5 per cent for legal expenses was deemed proper, p. 224.

Valuation, § 129 — General overheads — Administrative expenses.

31. An overhead allowance of 1 per cent for administrative expenses was authorized, p. 224.

Valuation, § 135 — Engineering and superintendence — Structural items.

32. An engineering and superintendence allowance of 5 per cent to be applied to structural items, exclusive of general equipment but including communication equipment, was held adequate for an electric company, p. 224.

Valuation, § 140 — Interest during construction — Reproduction cost.

33. A 3-year construction period and a 6 per cent rate of interest appeared adequate in determining the reproduction cost of electric utility property, p. 225.

Valuation, § 103 — Accrued depreciation — Restoration of meters.

34. An estimate of the cost to restore meters essentially to a new condition fails to give any weight to obsolescence or supersession; although the meter, after being repaired, operates so as to measure correctly the quantity of electrical energy used, the meter is by no means a new meter, p. 227.

Valuation, § 98 — Accrued depreciation — Method of determining.

35. Deduction for obsolescence on the basis of actual knowledge of an electric company's operating practices, is a correct method of determining depreciation, p. 228.

Valuation, § 26 — Trend of costs — Changes since appraisal.

36. The Commission, in determining the fair value of electric utility property, will consider the trend of costs of material and labor from the date of appraisal to the date of the Commission's finding, p. 229.

Valuation, § 330 — Going value.

37. The element of value in an assembled and established plant doing business and earning money over one not thus advanced should be considered in the finding of fair value of a public utility corporation, p. 231.

Valuation, § 332 — Going value — Separate allowance.

38. No separate allowance need be made for going value when in arriving at fair value all necessary overheads and construction costs are considered, but in arriving at fair value of the property this intangible is to be considered and an amount included which, in the opinion of the Commission, is justified by the evidence and is reasonable, p. 231.

Commissions, § 16 — Jurisdiction — Statutes and decisions.

39. The state statute, as interpreted by the supreme court, is the guide by which the question of Commission jurisdiction, or lack thereof, may be decided, p. 233.

Depreciation, § 42 — Reserves — Charges to.

40. A depreciation reserve created by charges to operating expenses for the ultimate retirement of electric property should not be used for the writing off of nonutility and customer-owned items, p. 233.

Depreciation, § 26 — Annual and accrued.

41. Depreciation and the annual depreciation allowance are closely related and should be computed by like methods, p. 236.

Depreciation, § 32 — Straight-line percentage — Consistency with accrued depreciation.

42. A determination of annual depreciation should be rejected when straight-line percentages have been followed while estimates of accrued depreciation are not based upon the straight-line theory, p. 236.

Depreciation, § 29 — Adjustment of annual accruals — Experience.

43. Annual accruals should be adjusted to conform with the actual experience on the property of the utility concerned, p. 237.

Depreciation, § 23 — Adjustment of accruals.

44. If the accruals to the depreciation reserve are adjusted to the extent that they will provide for retirements made currently and also the ratio of the reserve to investment in depreciable property fixed at its present level, the company and the investor will be amply safeguarded, a sufficient buffer will be provided for large, unforeseen retirements, and a proper and equitable contribution will be made by the consumer for the property worn out in his service, p. 237.

Expenses, § 48 — Dues.

45. Dues cannot be considered part of the operating expenses of a public utility company, p. 238.

Expenses, § 46 — Donations.

46. Donations cannot be considered part of the operating expenses of a public utility company, p. 238.

Expenses, § 5 — Jurisdiction of Commission — Management fees.

47. The question whether or not certain items of service actually rendered by an affiliate to an electric company are necessary, so as to justify their inclusion in operating expense, is one of management which the Commission will not challenge, p. 239.

Expenses, § 84 — Payments to affiliates — Proof as to cost — Filing with Securities and Exchange Commission.

48. The filing by a holding company of intention to register with the Securities and Exchange Commission, under provisions of the Public Utility Holding Company Act prohibiting a holding company from selling goods or services to a subsidiary at more than cost, was accepted as conclusive proof that services furnished to a subsidiary were rendered at cost, for the purpose of including a management fee as an operating expense, p. 239.

Expenses, § 26 — Advertising — Calendars.

49. The proper disposition of the cost of calendars distributed by an elec-

tric company, containing legitimate advertising on one side and matter foreign to the sale of energy on the other side, is an apportionment based upon the information contained therein, resulting in assigning one-half of the cost to new business advertising operating expenses and one-half to deductions from gross income, p. 240.

Return, § 9 — Fair value basis.

50. A public utility corporation is entitled to charge rates that will produce a fair rate of return upon the present fair value of the property devoted to public service, p. 242.

Return, § 22 — Reasonableness — Factors considered.

51. The Commission in determining the proper rate of return must consider all relevant factors and the result should be one which, when considered in the light of past, present, and probable future conditions, will not place undue burden upon the consumers or the company, p. 242.

Return, § 87 — Electric utility — Percentage allowed.

52. A rate of return of 6½ per cent was allowed on the present fair value of an electric company's property devoted to public service in order to furnish satisfactory service to the consumers and reasonable protection to the utility, p. 242.

[August 10, 1939.]

PROCEEDING *to determine present fair value and operating charges of power and light company; present fair value and rate of return determined and rate schedule ordered to be revised.*

I. History of the Proceeding

This proceeding was instituted by the Commission, on its own motion, by its order issued August 8, 1929, directing its engineering department to make an inventory and appraisal of the property of the Kansas City Power & Light Company and directing its accounting department to make an audit of the company's books and records for the purpose of furnishing any and all information deemed necessary to determine the present fair value of the company's property and the proper operating charges for use in future proceedings before this Commission. Following that the company filed a new schedule of rates applicable to residence service and general lighting and power service, which reduced rates in the amount of $400,000 annually. The Commission directed that the proposed audit and appraisal be postponed for at least eighteen months.

On July 18, 1932, a petition signed by some 3,500 customers of the Kansas City Power & Light Company in Kansas City, Missouri, was filed by Dr. James B. Inscho, which petition asked that the Commission take steps to reduce power and light rates in Kansas City, Missouri.

An audit by the Commission accountants of the plant account to December 31, 1932, was started in September, 1932, and completed in September, 1933. Their audit of the operating expenses for the year ended July 31, 1936, and of the plant account for the period January 1, 1933, to July 31, 1936, was started August,

1935, and their report was filed April 26, 1938. The inventory of the property began in January, 1934, and the Commission engineers' appraisal report was filed October 25, 1937. The company filed its appraisal November 5, 1937. On March 18, 1938, the Commission issued its preliminary report and order directing the company to prepare and present schedules of electric rates which would reduce the annual revenue from that source in the amount of approximately $1,000,000 annually, said schedules to become effective not later than May 1, 1938. The company accepted the Commission's order and the schedules were filed on April 30, 1938.

From August 8, 1929, the date of the Commission's order for an audit and appraisal of the company, to June 30, 1939, the company filed revisions of rates designed to result in reductions approximating $2,002,888 as follows: [Table omitted.]

The Commission notified all interested parties that the case was set for hearing at its office in Jefferson City on June 6, 1938. The Merchants Association of Kansas City, Missouri, The Retail Druggists Association, The Kansas City Motor Car Dealers Association, The Automotive Trades Association, Incorporated, The Retail Grocers Association, Johnston G. Craig et al., and the Trianon Hotel Company, all of Kansas City, Missouri, appeared by counsel as interveners. In order to expedite the hearing the testimony of most of the witnesses who were to testify was reduced to writing and exchanged prior to the hearing. The case was heard before the entire Commission during the period June 6, 1938, to June 30, 1938, and was submitted on the record.

Brief was filed by the interveners on May 18, 1939, and by the company on June 17, 1939. Reply brief of interveners was filed on July 21, 1939.

II. Description of the Property

The Kansas City Power & Light Company, hereinafter referred to as "company," is a Missouri public utility corporation with principal offices at 1330 Baltimore avenue in Kansas City, Missouri, which owns, operates, and maintains properties for the generation, distribution, and sale of electricity in Kansas City, Missouri, and in various communities in Carroll, Cass, Chariton, Clay, Howard, Jackson, Lafayette, Pettis, Platte, Randolph, and Saline counties in Missouri; for the distribution and sale of steam in the downtown district in Kansas City; and for the sale of water in Brunswick and Carrollton, Missouri. The company also owns electric properties in nine counties in Kansas and water property in three towns in Kansas. In addition to the foregoing property owned and operated by the company, it owns electric, gas, and heating property in Iowa, which is operated under contract by the People's Gas and Electric Company (Delaware) of Mason City, Iowa. Electricity is distributed in 37 communities and in rural areas outside of corporate limits to approximately 126,000 customers in Missouri. Steam for heating and manufacturing purposes is sold to approximately 260 customers in the downtown area in Kansas City.

The principal generating facilities

owned by the company consist of three steam plants. One steam plant, known as Northeast station, is located in Kansas City and has an installed capacity of 140,250 kilowatts of 60-cycle generating equipment; a second steam plant, also located in Kansas City and known as Grand avenue station, has an installed capacity of 46-500 kilowatts of 25-cycle and 35,000 kilowatts of 60-cycle generating equipment; and the third plant, located at Carrollton, Missouri, and maintained for standby service, has an installed capacity of 675 kilowatts of 60-cycle equipment.

The following table shows in terms of kilowatt hours and percentages the sources of the power supply of the company during the year ended July 31, 1936.

	Kilowatt Hours	Per Cent
Generation		
Northeast station	501,904,000	70.34
Grand avenue station	209,496,000	29.36
Carrollton steam power plant	1,719	....
Total—Generated	711,401,719	99.70
Purchased Power		
Kansas City Public Service Co.	115,932	0.02
City of Salisbury, Missouri	2,110	...
City of Ottawa, Kansas	2,037,145	0.28
Total—Purchased	2,155,187	0.30
Total Generated and Purchased	713,556,906	100.00

III. Corporate History

The Kansas City Power & Light Company was incorporated under the laws of the state of Missouri, on July 29, 1922, for a period of fifty years. The primary purpose of the creation of the corporation was the consolidation of the properties, rights, and franchises of the Kansas City Power and Light Company and the Carroll County Electric Company.

There were sixteen underlying companies, whose properties, by acquisition, merger, or consolidation, have been united to constitute the present company.

The company operates all of its owned property, with the exception of that located in Iowa, which is operated by the predecessor company, Peoples Gas & Electric Company, as agent for the company.

At December 31, 1937, the outstanding securities of the company were:

Capital Stock	Stated Value
Common—No par value—525,000 shares	$24,380,000.00
First preferred—$6. Cumulative, Series B. No par value—40,000 shares	4,015,000.00
Total Capital Stock	$28,395,000.00
Funded Debt	Par Value
First mortgage bonds—3¾ per cent Series maturing September 1, 1966	38,000,000.00
Total securities outstanding	$66,395,000.00

Control of the management and affairs of the company is vested in both classes of capital stock, common and preferred stockholders voting share and share alike. Actual control rests with Continental Gas & Electric Corporation, a Delaware corporation with offices in Chicago, Illinois, which owns all of the common stock outstanding. The Continental Gas & Electric Corporation is controlled by the United Light and Railways Company, which in turn is controlled by the United Light and Power Company.

There was no direct or wholly owned subsidiary of the company at

December 31, 1937. At that date the company owned $92,600, book value, of common stock of the United Light and Power Engineering and Construction Company, a service organization rendering management and engineering services described elsewhere herein.

IV. Estimated Original Cost

The Commission accountants introduced their estimate of the original cost of the property of the company at December 31, 1937, allocated to departments and divisions. The estimated original cost of the Missouri utility property follows:

State of Missouri	7-31-36	8-1-36 to 12-31-36	1-1-37 to 12-31-37	Total at 12-31-37
Electric department	$55,096,356.73	$781,661.63	$1,122,224.68	$57,000,243.04
Heating department	3,018,296.52	60,289.64	77,278.69	3,155,864.85
Water department				
Carollton	210,052.18	1,745.28	1,187.78	212,985.24
Brunswick	63,772.50	267.80	777.28	64,817.58
Total—State of Missouri	$58,388,477.93	$843,964.35	$1,201,468.43	$60,433,910.71

Neither the company nor the interveners filed an estimate of the original cost of the property but both parties offered objections to portions of the accountants' estimate as referred to hereinafter.

Reorganization Expense

[1] The sum of $560,001.03, paid in 1916 by a predecessor of the company to the Federal court as part of the purchase price of certain electric property, has been termed "reorganization expense." In substance, the amount represents reorganization expenses and receivership costs incurred by the court, which pertain to the electric department.

The Commission accountants eliminated this sum, but recommended that it be given consideration.

The company, in support of its claim for the inclusion of the sum in an original cost estimate, cites our order in Cases 5905 and 7593, in Re Union Electric Light & P. Co. (1937) 17 P.U.R.(N.S.) 337, in which we stated that we would not include in original cost an estimate of undetermined costs of organization, but that we would give weight to such costs in the consideration which we would give original cost in the determination of present fair value. The company contends that inasmuch as the expenditure of $560,001.03 is recorded in its books as a cash payment and a part of the purchase price of the property involved, it should be included in original cost.

We are concerned here with the determination of cost, and not of value. Original cost, as defined in Instruction No. 3—Electric Plant Accounts, of the Uniform System of Accounts prescribed by the Federal Power Commission and adopted by this Commission for the use of the electric utilities of Missouri, is the "*cost incurred by the person who first devoted the property to utility service.*" (Italics ours.) While we are aware that the property could not have been acquired from the court without payment of the sum in question, it cannot be gainsaid that the property was devoted to public utility service before this particular item of

cost was attached to it as a condition of purchase and sale.

We shall not, therefore, reinstate the sum in the estimate of original cost. However, for reasons hereinbefore stated, it is evident that the sum of $560,001.03 was a prudent investment on the part of the predecessor, and we shall afford it important consideration in our subsequent determination of present fair value.

Engineering Fee

[2, 3] The company paid to the affiliated United Light and Power Engineering and Construction Company certain engineering fees during the period July 1, 1927, to December 31, 1937. The amount of such fees paid and recorded in the company's property account at the latter date follows:

Missouri electric department	$366,191.84
Kansas City heating department ..	7.15
Total	$366,198.99

This sum represents a flat rate of 5 per cent on all expenditures for work done by the United under contract with the company. The Commission accountants eliminated this sum from plant account, because they could not determine the cost of the services performed, stating that if the company presented evidence substantiating the propriety and the cost of the services rendered, the elimination should be restored.

The company witness was cross-examined regarding the number and calibre of engineers, other than those of United, at the disposal of the company. If the purpose of this cross-examination were to establish the fact that the services of United were unnecessary, we conclude that, barring an obvious duplication of services, the question of employing engineers is one of management, and is not for us to pass upon.

In substance, the record shows that the actual cost of reasonable and necessary services performed by United was $268,541.47 or a difference of $97,650.37 under the amount of $366,191.84 recorded by the company. The actual cost of $268,541.47, a part of which is assignable to Kansas and heating departments, does not include charges for services of executives, the purchasing department, fixed charges, and return which the company witness contended would absorb the difference between the payment and cost, but no tangible evidence was introduced to support this contention.

The Commission is of the opinion that an affiliated service company such as the United should not receive a profit on services performed and it will therefore allow the cost of the actual services in this case.

We shall, therefore, reinstate and allocate the actual ascertainable costs of the engineering services rendered by United to the Missouri properties as follows:

Missouri electric department	$229,538.28
Kansas City heating department ..	8,929.10
Total	$238,467.38

Reallocation of Property

The estimated original cost of the property of the company, as submitted by the Commission accountants, above, was allocated to the various departments and operating divisions largely upon bases furnished by the Commission engineers. The Commission's accountant stated that if any of such engineering bases were altered, a corresponding correction should be

made in the original cost estimates.

In another chapter of this report we have determined the proper allocation of property, which, applied to the original cost, results in increases at December 31, 1937, as follows:

Missouri electric department	$425,302.99
Kansas City heating department	8,527.96
Total	$433,830.95

Elimination of Land at Cost

[4] In the estimate of original cost presented at the beginning of this chapter, land is included at cost.

We are admonished by the courts, in proceedings such as these, to consider land at its present fair market value in determining the present fair value of the property.

Since we have presented our finding of the present fair market value of land in another chapter, we shall eliminate the cost of land included in the estimate of the original cost. The amounts eliminated follow:

Missouri electric department	$2,065,430.34
Kansas City heating department	166,357.41
Missouri water department	
Carrollton	4,895.37
Brunswick	1,173.83
Total	$2,237,856.95

Conclusion

After consideration of all evidence pertaining to the estimated original cost of the property of the company, resulting in the adjustments recited hereinbefore, we present our finding of such cost at December 31, 1937, which includes construction overheads and excludes land:

	Missouri Electric	Kansas City Heating	Carrollton Water	Brunswick Water
Commission accountants	$57,000,243.04	$3,155,864.85	$212,985.24	$64,817.58
Increases				
Engineering fee	229,538.28	8,929.10		
Reallocation of property	425,302.99	8,527.96		
Decrease				
Elimination of cost of land	2,065,430.34	166,357.41	4,895.37	1,173.83
Estimated original cost (exclusive of land)	$55,589,653.97	$3,006,964.50	$208,089.87	$63,643.75

We shall consider each of these estimates in our subsequent determination of the present fair value of the properties.

V. Land

The estimate of the fair market value of all of the land owned by the company in Jackson and Clay counties as used in the Commission engineers' appraisal was prepared by Mr. H. H. Halvorson, a qualified real estate appraiser of Kansas City, Missouri. The values shown on the remainder of the land in the Commission engineers' report was prepared by the Commission engineers from opinions obtained from bankers, real estate men, and others having a knowledge of the present fair market value of land in the locality or community.

The fair market value of land shown in the appraisal report of the engineers of the company was supplied to the company engineers by the officers of the company. The land values furnished appear to have been based upon the knowledge that the officers had of the purposes for which the property had been acquired, of its location, and of its general adaptability to the operations of the company; upon the premises that all of the real estate

had been acquired at fair value and that the cost of such real estate as reflected upon the books of the company was the best evidence of its value to the company; and upon the knowledge of what costs had been incurred to bring the property to grade. The costs to the company appear to have been adjusted where property was no longer necessary in the operation of the company or where appreciation had occurred. Appreciation appears to have been determined by a study of transfers of real estate in the immediate vicinity of a specific tract and, in some instances, was also based on the judgment of realtors familiar with values in the vicinity.

The comparative appraisals of land are shown in Table I, following. [Table omitted.]

The company, in support of its land appraisal, introduced three witnesses who had specialized knowledge of land values in Kansas City on Baltimore aveune properties, riverside industrial tracts, and switch properties, respectively. The estimates of fair market value submitted by these witnesses were as follows: [Statement of land owned is omitted.]

The interveners protested that the land appraisals used by the Commission and the company were both too high. Mr. Lee Dunlap of Kansas City testified as to land values for the interveners. His appraisal is as follows: [Table omitted.]

Comparatively, the difference of $153,394 between the Commission and the company land appraisals is not great. However, we find that $97,277 of the difference is on some $3,000,000 worth of land on which the company introduced additional evidence. There is a difference of $56,117 on the remainder of the land on which the company introduced only the evidence of Mr. Smith. The land appraisal for the interveners is greatly at variance with the other two appraisals. On the plant sites and the Baltimore avenue property, the Commission appraisal is $2,414,767, the company appraisal is $2,475,000, while the Dunlap appraisal is $1,085,632.

[5] A careful study of the testimony of Mr. Smith clearly indicates that the land appraisal of the company is not acceptable as a basis for determining fair market value. We are of the opinion that a knowledge of the purpose for which land has been purchased or its general adaptability to the operations of the company has nothing at all to do with the fair market value of the land, nor can the Commission see that there is any more reason for accepting the company's book figures as being the fair market value of the land any more than it should accept the book figures of the cost of the remainder of the property as representing the fair value of that portion of the property. Consequently, we cannot accept the land appraisal made by company officials.

[6] The company's witness Van Evera testified that, in his opinion, the fact that the lots in the vicinity of the general office building have been assembled under one control is an important element of value. He estimated this added element, or plottage value, to be 25 per cent. The courts have uniformly held and this Commission is of the opinion that there cannot be added to the valuation of land of public utilities an increment for plottage value.

After careful consideration of the facts and evidence as disclosed by the record in this case concerning the fair value of land owned in fee, the Commission is of the opinion that the fair value of the respective tracts is as shown in the Commission engineers' appraisal.

[7] Easements are included in both appraisals at the actual cost to the company and include all cost of acquisition and recording. In the instant case, the cost to the company appears to be the best measure of their present cost. The Commission will adopt $309,765, the total as shown in the appraisals of the Commission engineers and the engineers for the company, as the fair market value of the easements of the company.

The separation of land between that used in public service and that not so used and the allocation of used land between the various departments will be treated in a later section of this report.

VI. Cost of Reproduction

Inventory

The inventory for the respective appraisals in this case was prepared by company engineers under the supervision of Commission engineers and was checked by Commission engineers, so that the quantities used in both appraisals represent an agreed inventory.

Exhibit CE–1, the Commission engineers' appraisal of the property, shows their estimate of the cost of reproduction and the cost of reproduction less depreciation of the company's electric, steam heat, and water properties located in Missouri and also of a portion of property located in Kansas which is used in service of customers in the state of Missouri.

Commission Engineers' Appraisal

Unit Costs

Except for the building accounts, all unit costs were developed by Commission engineers. Material and equipment prices were obtained from manfacturers and jobbers except when catalogue prices with applicable discounts could be used. Except for Grand avenue and Northeast stations, the estimates of cost of all buildings were prepared for the Commission engineers by a Kansas City building contractor. The Commission engineers prepared their own estimate of cost of the buildings at Grand avenue and Northeast stations.

Labor Rates

The evidence shows that the Commission engineers, in determining the labor rate to be used in computing the unit costs applicable to the various items of property, assumed that all power plant equipment and substation equipment located in Kansas City would be erected with union labor to be paid current union labor rates. All other labor was assumed to be nonunion. Hourly rates for laborers and the crafts commonly employed in everyday construction were determined from a study of rates actually being paid in Kansas City for such labor. Classes of labor such as linemen, groundmen, line foremen, cable splicers, and others which are not commonly employed except by electric companies, were assigned wage scales which were actually being paid by the company on the date of the appraisal.

Direct Overheads

The direct overheads[1] used by the Commission engineers in estimating the cost of installing equipment in power plants and substations were determined from an analysis of a large work order of comparatively recent construction on this particular property. For all other direct overheads, the results of the compilation of data by the Commission's engineering department over a period of several years, and which has been checked wherever possible with actual work order analysis, were used.

Labor Performance

Labor performance for the installation of power plant and substation equipment was estimated by the Commission engineers on the basis of the weight of the equipment and of the number of moves required to place. These estimates were checked against quotations of erection by various manufacturers and also with work order analyses of company construction. In some instances quotations from the manufacturers included the cost of installation or erection. Labor performance for plant piping was based on performances used on other appraisals and which were adjusted to reflect conditions in the Kansas City Power & Light plants.

For underground conduit and cable, the Commission engineers' labor performance was based upon information in their files, upon information obtained from other appraisals in Kansas City, upon information concerning construction in other cities in Missouri, upon the experience of local contractors in underground work in Kansas City, and upon information gained from conferences with company employees who were familiar with construction conditions on the Kansas City system. Also reference was made to the text, "Underground Systems for Electric Light & Power," by T. C. Ruhling, formerly construction superintendent for the company.

Basic labor performances for the overhead distribution system are from the unit costs developed on the Commission engineers' appraisal of the Union Electric Light and Power Company of St. Louis, as adjusted to fit conditions in Kansas City. Performances for meters were, in the most part, the result of conferences with employees of the company's meter department.

The steam-heat appraisal is bottomed on the American District Steam Company's estimate of the installation cost at labor rates used by Commission engineers, and is combined with the Commission engineers' estimate of the cost of excavation, backfill, and paving removal and replacement.

Company Appraisal

General

The appraisal for the company, which was prepared by engineers of the United Light and Power Engineering and Construction Company, adopted a wholesale reproduction basis, which assumed that the entire property

[1] In this proceeding a number of terms, direct overheads, direct material overheads, direct labor overheads, indirect costs, structural overheads, and miscellaneous construction cost, have all been used to describe the same items of cost. We are accustomed to using, and in this report will use: "Direct overheads," "direct labor overheads," and "direct material overheads."

would be reproduced in one continuous operation, which reproduction for the electric department would require three years from the start of actual construction. It was assumed, in general, that materials would be purchased by the company and installed by forces in the company's employ, except for buildings and other large structures that would be built by general contractors, and except for turbo-generators, boilers, and other large or special equipment, which would be delivered and erected by the manufacturers.

Material and Labor Prices

The engineers for the company used the same procedure as the Commission engineers in obtaining prices as of the appraisal date, July 31, 1935, and followed the construction practice of the company in assuming that union labor would be used on the construction of its buildings and the installation of the power plant and substation equipment, and adopted union labor rates in effect on the appraisal date for the estimate of such construction. On all other classes of construction, labor rates as paid by the company as reflected by its payrolls were adopted. Their labor performances and the make-up of their gangs are based almost wholly on experience of this company (KCP&L) and of many other companies for whom the United engineers have prepared appraisals. The engineers for the company claim that they have given great weight to actual costs as shown by records of the company, where they are available.

Direct Overheads

Incorporated in the United Company's appraisal are miscellaneous construction costs, or direct overheads, as more completely set out in Exhibit "C." A comparison of the respective engineers' estimates of the cost of reproduction as of July 31, 1935, exclusive of land and general overheads, may be obtained from Table II, following. [Table II, omitted, shows cost of reproduction July 31, 1935, as follows: Total electric Public Service Commission appraisal, $54,755,-242; company appraisal, $61,178,864; for steam heating, Public Service Commission appraisal, $2,312,560; company appraisal, $2,658,966; and for water, Public Service Commission appraisal, $233,098; company appraisal $263,896.]

Differences

The reasons for the difference between the two appraisals can be best considered under the headings of Structures, Labor and Direct Labor Overheads, Underground Conduit, Material and Direct Material Overheads, each of which will be discussed separately.

Structures

[8] Of the $670,000 difference between the two appraisals in Account 312 — Structures, approximately $620,000 is found in the appraisal of the power plants at Northeast and Grand avenue stations. On the remaining items in the structures account of the electric property, the two appraisals are but $50,000 apart in over $6,000,000 worth of property. The latter difference hardly needs explanation since it is well within the range to be expected from independent estimates. A portion of the difference is

attributed to the fact that the Swenson Construction Company, which prepared the estimate of building cost for the company, used 1½ per cent performance bond while the Long Construction Company, the Commission engineers' estimator, used 1 per cent. The evidence shows that although 1½ per cent performance bond is required for private work, 1 per cent as used by the Long Construction Company is the proper percentage for construction work performed for utilities. Accordingly, the Commission will adopt the Long Construction Company's estimate as incorporated in the Commission engineers' appraisal as the cost of reproduction of all structures except those located at Northeast station and Grand avenue station.

The Commission engineers prepared their own estimate of the cost of structures at Northeast and Grand avenue stations. This estimate was some $620,000 lower than the one prepared by the Foundation Company for the United engineers. This difference was caused by the fact that the Commission engineers used lower direct costs, 4 per cent contractor's profit and 1 per cent for performance bond. In addition to higher direct costs, the Foundation Company used 8 per cent contractor's profit, and 1½ per cent performance bond. The Foundation Company, which constructed most of the structures at Northeast station, had available the record of the difficulties encountered during its original construction, consequently, was in a much better position to estimate the cost of reproduction.

After careful consideration of the evidence relating to the cost of reproducing the buildings at Grand avenue and Northeast stations, we shall adopt the Foundation Company's estimates as the cost of reproduction as of July 31, 1935, after adjusting same to reflect 1 per cent allowance for performance bond.

Labor and Direct Labor Overheads

The difference in labor costs of the two appraisals included in Accounts 313 and 344, inclusive, are as shown in Table III, following. [Table omitted.]

[9, 10] The differences were caused not only by unlike labor performances, but also by the differences in labor rates used in the respective appraisals. The allowances for direct labor overheads are so nearly in accord that they are accepted without further adjustment. As is generally the case, there is considerable variation as to the amount of labor required to perform certain tasks. The results before us are too far apart, in some instances, to be covered by the explanation of a difference in judgment. The variation in rates used for common labor accounts for some of the divergence in Account 330—Underground Conduit and in Account 26—Steam Distribution System. The Commission engineers used 42½ cents per hour for common labor, contending that rate is now being paid by construction companies in Kansas City. The engineers for the company used 50 cents per hour, claiming that rate would be in effect in event of wholesale reproduction. The Commission engineers also assumed the use of common labor for certain duties in Account 331—Poles, Towers and Fixtures. Notwithstanding that common labor was used extensively on the construction of the company's longest transmission line,

the engineers for the company insisted that common labor had no place in a line gang and used instead groundmen at the rate of 64 cents per hour. We are of the opinion that 42½ cents per hour is a proper rate for common labor and are of the further opinion that common labor would be used economically in pole line construction in event of complete reconstruction.

The engineers for the company placed considerable emphasis upon the claim that their costs are based upon actual experience and that they do not reflect theoretical costs in any sense. We are of the opinion that the Commission engineers' background of construction costs as gained from the appraisal of most of the electric utility properties in the state of Missouri relieves the unit costs they have developed for this appraisal from the charge of being entirely theoretical.

[11] The dependence that the engineers for the company placed in the estimates of manufacturers for the labor for erection of items of equipment indicates a fundamental weakness in their preparation of estimates. The Commission's experience is that manufacturers who, as a rule, have no specific information regarding circumstances surrounding the proposed installation and who have limited knowledge of local conditions, of labor rates, or of other circumstances which may affect the cost of the erection are not in a position to make an accurate estimate of the cost of erection and are prone to make labor estimates more than ample.

[12] In a similar manner, the adoption by the engineers for the company of 37 per cent of the cost of material as the labor cost for the erection of plant piping is not a satisfactory method of determining that cost. The fact that the 37 per cent was derived from a study of a "cost plus" job which employed a large proportion of journeymen steamfitters with a correspondingly low percentage of helpers and common laborers, together with the fact that the plant was "hot," or in operation, during the time of the construction, leads us to believe that 37 per cent is too high. The Commission is of the opinion that the percentage used by the engineers for the company is unreasonable, and that the labor estimate for piping as used by the Commission engineers should be adopted in this case.

Underground Conduit

The amount of labor included in the Commission engineers' estimate, $896,196, is about 44 per cent of the amount included for the same item in the company appraisal. Adjusting the company appraisal downward to reflect a 42½-cent labor rate for common labor would reduce their estimate to approximately $1,800,000, and would still leave the two estimates $900,000 apart. The company claimed that the Commission engineers used labor performances as developed for utilities in other cities and also used performances found for underground systems of other utilities in Kansas City. The company contended that such underground systems are not at all comparable to the company's underground system and that the requirements for construction are entirely different. The Commission engineers contended that the analysis of the original construction cost made by the engineers for the company was

not made of a representative cross section of the property and consequently the study was unbalanced. Notwithstanding the fact that the Commission agrees with its engineers with respect to the cost analysis made by the engineers for the company, the Commission is of the opinion that the unit costs for excavation used by the Commission engineers are too low for this class of construction.

The testimony of company witness Ruhling, who testified that no money was spared in the construction of the Kansas City underground system, offers a reason for the high original cost of underground construction in Kansas City. The construction policy followed offers an additional reason why the analysis made by the company engineers of the actual construction cost resulted in figures which are considerably higher than are usually found. After giving consideration to all the evidence, the Commission is of the opinion that $1,350,000 is a reasonable amount to be used for the labor in Account 330.

On the remainder of the accounts, although the company is somewhat higher than the Commission engineers, we are fully justified in adopting the Commission engineers' appraisal as the correct estimate of the cost of doing the work.

Materials and Direct Material Overheads

The amounts included in the appraisals of the respective engineers for materials in Accounts 313 to 344, inclusive, are shown in Table IV, following. [Table ommitted.]

There is a difference of about 10 per cent between the two appraisals which is attributed to the unlike direct material overheads applied by the respective appraisers. The amount included for materials in the appraisals should be the same since both groups of engineers in the main used prices obtained from the same sources. A rough check made by deducting the direct material overheads allowances from the respective accounts tends to verify this conclusion.

[13] In their direct material overheads allowances, the Commission engineers provided for purchasing expense, stores expense, omissions and contingencies, and miscellaneous expense. In addition to those items, the engineers for the company provided for the cost of superintendence and inspection, testing and balancing system, job plant expense, and general expense. The allowances made by the Commission engineers were made after a study of company construction records and with a knowledge of direct overheads used by Commission engineers in appraisals of other properties. The engineers for the company also made a study of the construction records of the Kansas City Power & Light Company and also of other construction work with which the United engineers were familiar.

For supervision and inspection, engineers for the company applied 3.5 per cent to all labor and material and to all contract items. It appears erroneous to make such a blanket application, since supervision is closely related to the quantity of labor involved and is not dependent upon the cost of the materials. In a similar manner it appears that the cost of supervision and inspection would be considerably less if the property were built by con-

tract than it would be if built entirely by company forces. Consequently, it appears improper to make a blanket application without regard to the amount of work performed by the respective methods.

Engineers for the company included 1½ per cent on power plant and substation material and on power plant and substation contract items for the cost of salaries, labor, materials, and fuel used in testing and adapting equipment prior to placing it in operation for continued service. The Commission engineers claimed that they had provided for these costs but did not set them out specifically. We are of the opinion that the Commission engineers failed to make sufficient provision for this item of cost, and that the amount included in the company appraisal is excessive.

[14] Another item of direct overheads included by the engineers for the company, which was not specifically included by the Commission engineers, is that of job plant expense. The engineers for the company included 3.5 per cent on power plant and substation labor and material and 1 per cent on power plant and substation contract items to provide for the cost of construction plant and temporary building, such as watchmen's shelter, blacksmith and machine shops, and railroad tracks and roads for construction purposes only, and to provide for the cost of power and energy for construction, blacksmith and machine shop equipment, operation, and maintenance of the job plant and equipment, its erection and dismantlement, temporary heating and heating of temporary shelters, snow removal, and the cleaning up of the job upon completion. The Commission engineers contended that a number of the items were duplications, in that the cost had been provided in other accounts such as tool expense, that the facilities, such as railroad tracks, would be furnished by the completed construction, or that the items would be furnished by the contractors and that the owner of the power company would not have to stand the cost. We are of the opinion that costs of this nature would be incurred and it is proper to include them, but that the amount included by the company engineers is entirely too great as they have been largely reflected in the estimates furnished the Commission engineers by the manufacturers and in the Commission engineers direct overheads.

[15] Another item of direct material overhead included by the Company engineers is that of general expense. They added 4 per cent on labor and on materials covering the company's cost of setting up and demobilizing a construction organization, including the recruiting, organizing, and training of an efficient construction personnel, the collection of proper equipment, the cost of lost efficiency due to the labor turnover incident to large-scale operation, and the cost of liquidation of personnel and equipment at the end of the construction period. A Commission engineer testified that he had never heard of such an item of general expense. We are of the opinion that the item is improper in that it duplicates other items of direct and general overheads. The cost of recruiting a construction personnel is an administrative problem. The organization and training of an efficient

personnel should be reflected in the performance and unit costs. The collection of proper equipment is a question of superintendence. The cost of lost efficiency due to labor turnover incident to large-scale operations is also reflected in unit costs. The cost of liquidation of personnel is reflected in the administrative expense, and the cost of liquidation of equipment at the end of construction period is included in tool expense. Consequently, to avoid duplication, it is proper to exclude the items of general expense in estimating the cost of reproduction of this property.

The interveners contended and brought out in the cross-examination of Commission engineers that material prices secured for appraisal purposes are not rock-bottom in that manufacturers are likely to be willing to sell at a lower price than may be quoted for appraisal purposes. The Commission engineers did not make any reduction in material prices used in their appraisal in accordance with such a theory. We do not deem it proper to adjust appraisals on evidence of that type.

After careful consideration of all the evidence relative to the cost of reproduction, and giving weight to the amounts that have been adopted as proper for a number of the components of the property, the Commission finds the cost of reproduction exclusive of general overheads and land, as of July 31, 1935, of the respective properties to be as follows:

Electric	$56,750,000
Steam heating	2,400,000
Water	
Brunswick	51,500
Carrollton	188,500

VII. Allocation and Property not Used in Public Service

There are a number of units of the company's property located in Missouri which are used jointly by various combinations of the company's electric, steam heating, water, ice, merchandising, and other nonutility service.

The engineers for the company and Commission engineers are not in agreement as to the items of property to be considered as not used in public service or as to the apportionment of items to various classes of service.

The respective appraisals and allocations are not on a comparable basis. In order to place the information in a workable form and to eliminate unnecessary duplications in discussion, we shall prepare tabulations to serve the needs of this report.

The physical property other than land which the Commission engineers have classed as Not Used in Public Service may be classed under four general headings:

1. Company Agrees That Property Is Not in Use.

2. Company Claims Property Should Be Considered As Used in Public Service but Classed As "Property Due for Retirement."

3. Property Held for Future Service but Classified by Company As Used in Public Service.

4. Property Which Company Claims Should Be Classed as Used in Public Service.

The items of property which have been segregated under the respective headings follow in Tables V, VI, VII, and VIII. [Tables omitted.]

In the first classification the two

groups of engineers are substantially in agreement except for the Southwest warehouse. There are other items on which there is some disagreement as to the percentage in use but the effect is negligible. With reference to the second group, it is observed that the engineers for the company have placed the property in zero condition and show it as having no value under the heading of the cost of reproduction less depreciation.

[16] As a general policy, this Commission holds, and has held, that a rate base should include only such property which is actually in use or the use of which is imminent.

[17] The record shows that the Commission engineers have endeavored to follow this policy and have set up as Used in Public Service only that part of the company's property actually used in public service on the appraisal date, or which was needed for adequate standby service or required for prospective expansion in business in the not-too-distant future.

Property was classed as nonused for the following reasons:

(a) Outlived its usefulness.

(b) Nonuseful because of changes in the system.

(c) Constructed for anticipated business which failed to materialize or did not appear prospective at the date of the appraisal.

(d) Partly or totally used in the nonutility enterprises of the company.

This procedure conforms to the methods heretofore followed and approved by this Commission.

Giving due consideration to the testimony and exhibits introduced relative to the group of property which both engineers classed as Not Used in Public Service, we shall adopt the allocations of the Commission engineers for the reasons they advanced and because of the fact that they obviously attempted to adhere to the Commission's policy mentioned above.

[18] We are of the opinion that all property which engineers for the company claim is "Property Due for Retirement" is properly classified by Commission engineers as Not Used in Public Service. The engineers for the company by placing the "Property Due for Retirement" in zero condition agree to its nonutility. If items of this type are not excluded from elements of original cost and reproduction cost used in determining the rate base, then there is no limit to the extent that obsolete, discarded, and superseded plant and equipment may be retained as Property Used in Public Service, or to the extent that the base for determining the annual requirement for depreciation may be broadened.

As shown by the Commission engineers' allocation report, their investigation of the property which engineers for the company classify as "Property Held for Future Service" reveals that it consists of property which has outlived its usefulness or has been rendered nonuseful by route changes, has been abandoned but not removed, or was constructed for anticipated future needs that have never developed. Their report shows that an investigation was made of each item. The company engineers offer no explanation other than the blanket explanation that the property is held for future service. We shall accept the Commission engineers' allocation of this group.

With reference to the group of

property about which there is considerable disagreement, we shall discuss the major items separately.

General Office Building

The properties administered from the company's general offices, which are located in the modern 32-story general office building at 1330 Baltimore avenue, Kansas City, Missouri, consist of not only the electric, steam heating, and water properties in Missouri, but also the electric properties in Kansas and Iowa, the water properties in Kansas, the heating property in Iowa, the ice property in Missouri, and the merchandising department, which the Commission considers nonutility. A portion of the space in the office building is rented to other companies. The Commission engineers allocated the building and the land upon which the building is located to the respective branches of the company on the basis of the net occupancy of the building with an allowance to provide for the increase in office space that may be required by the company within three or four years. This apportionment resulted in 27.00 per cent of the building and land being assigned to Property Not Used in Public Service as compared with 7.23 per cent so assigned by engineers for the company.

The engineers for the company testified that the building would be fully occupied by its own forces by 1942, that its occupancy is greater than the amount normally occupied in most office buildings, and, consequently, that it was improper for the Commission engineers and accountants to allocate any of the vacant portion of the building to Not Used in Public Service; and that even though a portion of the building be allocated to Not Used in Public Service, all of the land should, in any event, be considered as Used in Public Service. This claim was based on the theory that if the company had constructed a building which was just sufficient to take care of the company's needs, then the Commission would be obliged to consider the entire tract of land as Used in Public Service.

The company takes the position that their entire investment in general office property is warranted and appears to take the position that the Commission must of necessity allow in the determination of the rate base all of any item of property if the structure is principally used in public service, regardless of whether its use is economical.

[19] The Commission is of the opinion that, for allocation purposes, a structure and the land upon which it rests form a unit, and that an allocation of the building is also applicable to the land. In view of the unoccupied space in the building, it appears reasonable to believe that the office space used by the company at the appraisal date was surely ample and that the company's offices were not confined or restricted to close and inadequate quarters. In addition to the present usage the Commission engineers provided for reasonable expansion. We shall adopt the allocation prepared and used by the Commission's engineers and accountants for the apportionment of the general office building site and structure.

Grand Avenue Station

Grand avenue station is another unit of property about which there is considerable difference of opinion as

to nonuse and allocation. This plant was originally constructed in 1904 by the Kansas City Public Service Company as a 25-cycle generating station and was so used until 1927. The plant was then purchased by the Kansas City Power & Light Company after which new high-pressure boilers and additional modern generating capacity were installed, and the plant was used as a base load plant for the steam-heating system and as a means of supplying the 25-cycle demand. When the transfer of this property was made, the Public Service Company entered into a contract with the Power & Light Company and agreed to use not less than 37,500 kilowatts nor more than 45,000 kilowatts of 25-cycle capacity during any month until January 1, 1957.

After the rehabilitation of the plant, the demand of the Public Service Company for 25-cycle energy decreased to the extent that the operation of the plant was not as efficient as anticipated. In order to improve the efficiency of the plant, the Power & Light Company installed a 35,000 kilowatt, high-pressure, 60-cycle generating unit in 1929.

At the inventory date, the generating capacity of the Grand avenue station consisted of 61,500 kilowatts of 25-cycle equipment and 35,000 kilowatts of 60-cycle equipment. The boiler plant consisted of four 1,516 horsepower and one 756 horsepower, 700-pound working pressure boilers and sixteen 578 horsepower, 200-pound working pressure boilers. In 1937 the company installed a 20,000-kilowatt low pressure, 60-cycle unit, which made operation of the 25-cycle system more efficient, when operated in combination with the new 60-cycle machine. Since the date of the appraisal a 25-cycle machine (No. 3) has been removed, and another 25-cycle machine is to be rewound so as to generate at a frequency of 60 cycles. The present capacity of the plant is as follows: 25-cycle, 36,500 kilowatts; 60-cycle, 65,000 kilowatts.

The Commission engineers based their allocation on the premise that Grand avenue serves as a base load plant for the 25-cycle electric system and for the steam heating system, and that it serves as a peak load station for the 60-cycle system. The engineers for the company took the position that the plant is primarily an electric generating system and that, in its allocation, the steam requirements of the electric generating capacity are to be considered first, before any of the steam-generating capacity is to be assigned to the steam-heating department. This, of course, assumes an emergency condition for, as normally operated, Grand avenue carries the entire attached steam-heat load.

We shall first consider the question of assignment and allocation to Not Used in Public Service. The Commission engineers assigned the sixteen low-pressure boilers at Grand avenue, located in boiler rooms "A" and "B," to Property Not Used in Public Service. They claimed that the boilers are not used and have not been used since 1930 and that those in boiler room "A" are not connected to either smoke breaching or the steam-heater system, and that four of the boilers, which are stoker fired, have no provision for a supply of coal. These boilers were so classified by the Commission engineers after consideration of

the past operations of the plant and on the assumption that the high pressure boiler equipment is of sufficient capacity to carry the present anticipated load. The Commission engineers asserted that the only ground for including the low-pressure boiler as Property Used in Public Service would be as standby capacity for the steam-heating system, and since all the boiler capacity of the heating plant at 1312 Baltimore was considered as Used in Public Service for that purpose, there is no justification for including additional standby boiler capacity for the heating system The Commission engineers classified turbo-generator unit No. 3 and auxiliaries as Not Used in Public Service for the reason that at the time of the inventory and for several years prior the machine was not used. Since the date of the inventory this unit has been removed from the plant.

The engineers for the company did not class any of the property as "Not Used in Public Service" but they did set aside some of the property as "Property Due for Retirement" (*supra*). Boiler room "A" and turbo-generator No. 3 were placed in this classification.

The Commission engineers, after determining the units and items of equipment which were to be considered as Not Used in Public Service, allocated the proportionate part of the buildings occupied by the nonused equipment to Property Not Used in Public Service. After having allocated the building, a similar apportionment was made of the land.

The engineers for the company, as stated before, placed certain items of equipment in the category of "Property Due for Retirement," but in every case these were items of property which were clearly not used. No apportionment of buildings or land was made because of the fact that said property was occupied by equipment which was classified as "Property Due for Retirement."

With reference to boiler room "B" which the company considers useful, the engineers for the company testified that the eight low-pressure boilers located therein are held for use, that they are needed in cases of emergency, and that but for economic conditions of the past few years they would now be in actual use. The company's Exhibit "E" which shows their allocation of the Grand avenue boiler plant between steam-heating and electric departments indicates that the engineers for the company assumed that only four high-pressure and seven low-pressure boilers were available at any one time, one boiler of each classification being held in reserve at all times, and that the four high-pressure boilers would not afford sufficient steam capacity to satisfy the needs of a full electric load at Grand avenue.

A study of steam consumption of turbo-generators and of boiler capacities at Northeast station shows that the rated steaming capacities of boilers at that station are but 1 per cent in excess of the rated steam consumption of the generators. In other words, no provision was made in the design of that plant to hold any boilers in reserve.

The study of the steam required for the turbo-generators at Grand avenue station, as shown on pages 94 and 95 of Commission engineer's Exhibit 5, indicates that if the plant be operated

at the full 60-cycle capacity (55,000 kilowatts) and at a load of 37,000 kilowatts of 25-cycle energy (27,000 kilowatts for the maximum demand of the street railway plus 10,000 kilowatts for conversion to 60-cycle), the five high-pressure boilers afford sufficient steaming capacity to supply the requirements for the assumed electric generation.

If all of the turbo-generators, except No. 3 (which has been removed from the plant), are operated at full capacity, which will be a possible condition upon the proposed conversion of No. 5 from 25 to 60-cycle generation, the rated capacity of the high-pressure boilers is within 5 per cent of the estimated steam consumption for full load. This deficiency in high-pressure boiler capacity coupled with the fact that the high-pressure boilers consist of a small number of large units instead of a large number of small units (as is the case at Northeast station), so that having one boiler out of service would make a greater proportionate increase on the remaining boilers, may offer some justification for considering boiler room "B" as Used in Public Service. There is also the possibility that the management may plan to retire its down-town heating stations and use Grand avenue as the sole source of supply for steam heating. Boiler room "B" is a border line case which the Commission will classify as Used in Public Service.

Boiler room "A" and turbo-generator No. 3 are obviously items of property to be considered as property Not Used in Public Service and have been so considered (see Property Due for Retirement).

Before preparing an allocation based on the usage of the plant, the Commission engineers assigned a number of parcels of land around the edge of the Grand avenue plant site and the Grand avenue coal storage site to Not Used in Public Service for the reason that they are not used, cannot be used, or according to the Commission engineers, are not likely to be used, even though all of the buildings were entirely occupied.

The engineers for the company contended that a tract of real estate as large as the Grand avenue power plant site, which is approximately two blocks wide by five blocks long, is very difficult to assemble for the reason that landowners frequently refuse to sell the exact amount that might be desired, which makes it necessary to purchase excess quantities of land.

[20, 21] There is no general rule to apply in cases of this kind. The only test we are in a position to make is the one of reasonableness. After careful consideration of the evidence relative to nonused land at Grand avenue, the Commission is of the opinion that the isolated tract of land located west of Main street (north 20 feet of Lot 42, Block 4, 2,840 square feet in area) should be classed as nonuseful and that the remainder of the land at Grand avenue station should be classed as Used in Public Service. It does not appear reasonable that an industrial site of this character should be pared down exactly to the occupied portion.

[22–24] Having disposed of the items of property or of equipment that are directly assignable to Property Not Used in Public Service, we shall consider the land and buildings which the

Commission engineers have allocated to Not Used in Public Service because they are vacant or are occupied by equipment which has been assigned to Not Used in Public Service. The Commission engineers did this on the theory that the investment is not being used in the public service at the present time and that there is little prospect that it will be used in the immediate future.

The company did not subscribe to this theory and opposed deductions made in accordance with that line of reasoning. According to their witness Porter, on a property the size of the Kansas City Power & Light Company, there are always units temporarily idle in the development of business. The company contended that it should be permitted some leeway in the operation of its plant and that it should not be penalized because the building is not used to full capacity for generators and boiler equipment. The company also contended that the mere fact that the equipment is not in use at the day of appraisal is not sufficient cause to allocate a portion of the building and land to Not Used in Public Service. They claim that sometime in the future the nonused equipment will be retired and removed and will be replaced by new equipment, and when that takes place, the building and land will go into public service even under the Commission engineers' theory, but that the company will not have that property in the rate base.

The Commission is of the opinion that the leeway to which a company is entitled in the operation of its plant should not result in an investment in plant capacity far in excess of the anticipated demands of the customers of the present and of the near future. The latter claim of the company that presently nonused land and buildings should be included in a future rate base cannot be sustained. As an illustration, we shall assume that a rate is established that will earn a fair rate of return on a rate base which excludes land and structures occupied by nonused equipment. If the sales of electricity increase so that additional generating facilities are required and will be installed in the portion of the structure excluded from the rate base, then it is reasonable to believe that the revenue derived from the increased sales will earn a return not only on the investment in additional generating facilities which may be installed, but also on the land and structures which are then devoted to public service.

Therefore, the Commission is of the opinion that the theory of the Commission engineers which allocates a portion of the building and land to Not Used in Public Service when occupied by nonused equipment is correct. It is not held that the theory should be applied in every case, but an allocation of a portion of the land and structures at Grand avenue station to Not in Use because of the nonuse of boiler room "A" and turbo-generator No. 3 is a proper allocation.

[25] As to the method to be used for allocating the boiler plant between electric and steam-heating departments, the Commission is of the opinion that neither the company nor the Commission engineers have made the right approach. The company engineers have considered only the maximum demands of the electric systems and have ignored the maximum de-

mands that may be placed upon the boiler plant by the steam-heating system. Their allocation assigns 9.86 per cent to heating, 35.20 per cent to 25-cycle, and 54.94 per cent to 60-cycle electric. The Commission engineers, on the other hand, appear to have based their apportionment on normal operating condition of the plant at the time of heavy steam heating and 25-cycle demands and not to have given a great deal of consideration to the possible 60-cycle demands. They assign 20 per cent to heating, 35.33 per cent to 25-cycle, and 44.67 per cent to 60-cycle electric. We are of the opinion that a correct allocation of the boiler plant is one that considers the maximum demand of both the electric and steam-heating departments. The boiler plant is not of sufficient capacity to carry both demands simultaneously but the fact remains that the plant stands ready throughout the year to carry the electric demand in event of an emergency that would require that Grand avenue generate at its full capacity, and that at other times the plant actually carries the attached steam-heating load without assistance from any of the small boiler plants which have been assigned as standby equipment to the steam-heating system. We are of the opinion that an apportionment on this basis is proper and accordingly assign 18.50 per cent of the boiler plant to the steam-heating system, and 81.50 per cent to the electric system.

The building and land apportionments of the Commission engineers at Grand avenue will be revised in accordance with the above apportionment of the equipment.

1312 Baltimore Heating Station

[26, 27] This station consists of two buildings, one fronting on Baltimore and the other on Wyandotte, connected together by a tunnel under the alley between the two buildings. The building fronting on Wyandotte houses only boiler plant equipment. The Commission engineers considered all of this building as used in public service with the exception of the portion formerly used for coal storage and ash handling. This portion of the building was considered as not used in public service as all of the boilers in this station are equipped now for burning oil as fuel. The building fronting on Baltimore houses the boiler plant equipment, the abandoned electric generating equipment and offices, storeroom, steam-heating repair shop, and miscellaneous shops. The first floor contains the abandoned electric equipment while the second floor is occupied and in use. The Commission engineers allocated all of the building used to house electric generating equipment as property not used in public service and included the balance as property used in public service for the steam-heat department. The allocation of the building and of the land it occupies was made on the basis of volume of space occupied.

The company engineers considered all of both buildings as useful property of the steam-heating department. The reason advanced for so classifying was that "the structure has to be there whether this generating station is used or unused, and very naturally must occupy the land." With reference to the apportionment of the general office building and of space occu-

pied by nonused equipment at Grand avenue station as has been treated above, this plant affords another splendid illustration as to the need for proper allocation.

To this Commission, it is not good regulation to permit a portion of a structure occupied by nonused electric equipment to be classified as useful steam-heating property merely because the electric equipment which occupied a portion of the building had outlived its economic usefulness.

There is no question but that if the abandoned electric generating plant had been situated in a separate building both land and building would be classified as nonused electric property. Now merely because it so happened that the electric plant was located on the first floor of a building, the second floor of which was occupied by the steam-heating department, the company engineers would have the entire structure and site assigned to the steam-heating department.

The Commission is in accord with and will adopt the allocation prepared and used by its engineers.

Underground System—Conduit

The Commission engineers made a very thorough study of the conduit system at locations where the conduit in place appeared to be excessive for the present and for the future needs of the company. A complete study was made of each section of apparent superfluity, and the determination of excess capacity was made on the conditions existing in each section studied.

One group of conduits classed by the Commission engineers as Not Used in Public Service consisted of those located in viaducts crossing over the Kansas City Terminal Railroad Company. When the viaducts were built, some twenty years ago, the Kansas City Power & Light Company built conduits in all the viaducts which, in their opinion, would be crossed with conduit lines in the future. During the 20-year period, a number of the crossings have never been used. There is no underground distribution or transmission in the vicinity and very little possibility that there will be any in the near future. Accordingly all such nonused crossings were classified as Not Used in Public Service. Other viaduct crossings were built with excessive conduits which will not be used. The Commission engineers allocated the excess duct capacity to Property Not Used in Public Service, ample provision being made for an adequate reserve.

The Commission engineers made a study of each section of totally vacant conduit to determine the reason for its vacancy, whether it had ever been used and how long it had been vacant. The factors which were found to be responsible for such conditions are that some sections are frequently completely disconnected from the system, have been vacant for ten years or more, and have little possibility of ever being used; that some sections have never been used because of a change in plans or rerouting of circuit, of failure of development of a load area, or of the abandonmnet of load which is unlikely to be regained in the near future; and numerous other reasons. All vacant conduit was not classified as not used or useful. Much totally vacant conduit which, in the Commission engineers' opinion, might be used in the near future was considered as reserve

capacity and included with Property Used in Public Service.

Another group consisted of partially vacant conduits in which certain sections of conduit have only a small percentage of the ducts in use.

At locations where the Commission engineers could see no possibility of a section of conduit being used in the service of the public in the near future either as emergency or in expansion of the system, the excess portion was classified as Not Used or Useful. After making the allocation to Property Not Used in Public Service of the duct capacity previously mentioned, there still remains in Property Used in Public Service an unusually large percentage of empty ducts in relation to the used ducts. In the largest single item of ducts, 56.8 per cent of the total considered "Used in Public Service" is vacant. Of the next largest single item, 60.6 per cent of the total "Used in Public Service" is vacant.

The Commission is of the opinion that apportionment of conduit and manholes as made by the Commission engineers is a proper method.

Miscellaneous

There are a number of smaller items of property which the Commission engineers allocated to Not in Use for numerous reasons. The Gilliam office was allocated on an apportionment furnished by Commission accountants together with an allocation of space by Commission engineers. The Higginsville storeroom, 19th and Charlotte storeyard, Glasgow office, Sweet Springs office, and Brunswick office were allocated on similar bases. An item in Account 312 (g-1) at the storeyard at 25th and Pennsylvania consists of a fence inclosing a lot which has been classified as not used or usable. The Commission engineers accordingly classified the fencing as not used or usable. The item of equipment under Account 313 and located in the warehouse and yard at Northeast station consists of equipment that has outlived its usefulness, is not connected to any part of the operating system, and has a very remote possibility of future use. The items of general equipment at Carrollton, Brunswick, Glasgow, Higginsville, Gilliam, Marshall, and Sweet Springs are classified on the basis of the Commission accountants' allocation. The general equipment at Carrollton plant is allocated on the same basis as the plant proper.

The Commission engineers have followed a consistent policy of allocation throughout their report and the reasons for allocation of major items have been sound. The Commission is of the opinion that the apportionments made by its engineers relative to the miscellaneous items are in accord with the allocation policy expressed above in regard to major items and the Commission engineers' allocations will be adopted.

Land

The following table lists the name and the adopted present fair market value of tracts of land upon which the Commission engineers and engineers for the company are in agreement as to a classification of Not Used in Public Service. [Table omitted.]

The Commission adopts the recommendation of the engineers and classifies all the foregoing land as Not Used in Public Service.

The following tabulation shows the adopted present fair market value and the percentages classified as nonuseful of tracts of land which engineers for the company do not agree with the Commission engineers as to the per cent so classified. [Table omitted.]

In addition to the above tracts of land, the engineers are not in agreement as to land to be classified as not in use at Grand avenue, general office building, parking lot, Wyandotte street garage, and the heating station at Baltimore avenue and Wyandotte street.

Grand avenue, the general office building, and the heating station at 1312 Baltimore and 1311 Wyandotte have been discussed heretofore. The remaining major tracts will be discussed separately.

Parking Lot

[28] The company owns a lot with 125-foot frontage on Baltimore avenue by 142 feet deep, which we have found to have a present fair market value of $311,138. This lot is adjacent to the company's general office building and may be used by the company's customers during transaction of business at the company offices, but the evidence shows only a very small percentage of all customers makes use of it; and the Commission's engineers contended that for this reason there is no justification for its inclusion in Property Used in Public Service.

A study made by the Commission engineers indicates that a charge of approximately 30 cents for each car that is parked in the lot is required to pay a 6 per cent rate of return on the fair value of the land. The Commission engineers contended that if the Commission should find it proper to allow the expense of parking customers' autos while transacting business with the company, it would be more economical if the company would pay the parking charges of its customers in one of the several parking lots within close proximity to the general office building, where the regular parking rates range from 10 to 15 cents.

The company contended that parking facilities are limited in the vicinity, that it is difficult to obtain free parking, that the parking lot is a feature now being offered by many businesses in congested areas, and that offering free parking to its customers was a special type of service offered by the company which is of great advantage of the customer. The company further contended that just because all of the customers did not use the parking lot does not prove that it is not a worth-while service, citing the fact that the company also offers cashier's cages at which bills may be paid, but which are not used by all customers.

P. S. C. Accountants' Exhibit No. 4 shows that 9,195 cars were parked during October, 1936, the month of maximum usage. The records show that the customers transacted business with the following departments:

Collection	741
Cashiers	6,059
Lighting	101
Merchandising	1,143
Executive	57
Legal	37
Miscellaneous	1,057
	9,195

The company had 103,839 electric customers in Kansas City at July 31, 1936.

The Commission is of the opinion that the customers' parking lot is not used by enough customers of the company to justify the inclusion of the value of the lot in the rate base. If the lot were generally needed for the operation of the general office building, the Commission might be inclined to include the fair market value of the land in the rate base as used and useful property, but under the circumstances it does not appear proper to do so.

Miscellaneous Lands

The Commission engineers allocated the parcels in this group on various bases developed to fit the specific tract. The record shows that consideration was given to present usage and future requirements.

The company objected that the portions left in use by the Commission engineers were determined in an impractical manner. The engineers for the company claimed to have considered the amount of land necessary to provide for expansion and growth and the area which might be obtained from a willing seller in usual real estate transactions. They claim to have included no land which is totally unused or which "does not fit into the company's scheme of operation." No land was excluded "because some portion of an actively operated structure was not in use at the moment."

In general, the company took the position that the amount of land that is to be purchased and the purpose for which it is used are questions that should rest in the discretion of the management. Or in other words, only the company is competent to pass upon the use or nonuse of certain tracts of land. The Commission is unable to accept this viewpoint.

As in the allocation of property other than land, the Commission is of the opinion that its engineers have scrutinized the company's needs for land at the various locations considerably more closely than did the engineers for the company who appear to rely considerably upon the thought that the company would not be likely to purchase more land than necessary. The Commission engineers' allocation will be adopted.

Summarizing the Commission engineers' allocation of physical property other than land, and revising the allocations and costs in keeping with the revisions made by the Commission, the following percentages are found to be applicable to the electric property in order to allocate it according to use.

Used in Public Service	
Electric department	86.59%
Kansas City steam-heating department	1.64
Missouri water department	.03
Not Used in Public Service	
Used by Kansas and Iowa customers	3.77
Not used in public service	7.97
Total—Missouri Electric	100.00%

Similar allocations for the steam-heating and Brunswick water departments are as follows:

	Per Cent in Use	Per Cent Not in Use
Kansas City steam heating	87.76%	12.24%
Brunswick water	99.59	.41

The revised allocation of electric department land is as follows:

	Fair Market Value at December 31, 1937	
	Owned in Fee	Easements
Used in Public Service		
Electric department	$1,686,321	$306,172
Kansas City steam heating	295,015	.....
Missouri water	2,998	.....
Not Used in Public Service		
Assigned to Kansas & Iowa	104,930	3,109
Not devoted to public service	1,529,479	483
	$3,618,743	$309,764

The steam-heating and water department land is allocated as follows:

	Fair Market Value at December 31, 1937	
	In Use	Not in Use
Kansas City steam heating	$2,267	$30,115
Brunswick water	150	75
Carrollton water	2,000	..

VIII. General Overheads

Preliminary, Organization, Legal, Administrative, and Miscellaneous Expenditures

[29–31] The Commission engineers included 2 per cent for this item of General Overheads. This percentage was applied to a base including all physical property accounts except land and general equipment, but including Account 344(e)—Telephone, Telegraph, and Wireless System, an account ordinarily included with general equipment. This percentage is a judgment figure based on a study of the results obtained by the Commission's engineering department in the past in making investment appraisals. The engineers for the company used 1 per cent for preliminary and organization expense, ½ per cent for legal expense, and 1 per cent for administrative expense, which was applied to all accounts, exclusive of general equipment but including Account 344(e). The land account is the only difference as to the base. The company engineers admit that the proper allowance is largely a matter of judgment.

A study of the record shows that both of the recommendations are matters of opinion. It appears to the Commission that information of this kind determined from a study of the records of an operating company is not to be given too much weight for, after all, the administrative work is usually performed by operating officers of the company in conjunction with regular duties and the amounts or percentages charged to the construction project are, therefore, usually based upon an arbitrary apportionment.

This Commission has allowed both 2 and 2.5 per cent for this undistributed cost in other cases. In some cases where the record has justified, the higher percentage has been allowed. We are of the opinion that an allowance of 1 per cent for preliminary and organization expense, 0.5 per cent for legal expenses, and 1.0 per cent for administrative expenses, or a total of 2.5 per cent, is adequate for this company. These percentages should be applied to structural items only, exclusive of general equipment but including Account 344(e)—Communication Equipment.

Engineering and Superintendence

[32] The Commission engineers included 5 per cent for this item and applied the percentage to all structural properties, excluding land, easements, and general equipment, but including

Account 344(e) — Communication Equipment. The engineers for the company made the same allowance but in addition included 1 per cent on land. Both allowances are judgment opinions. The Commission engineers support theirs with past studies made by their department on other large utilities within the state. We are of the opinion that an allowance of 5 per cent to be applied to structural items, exclusive of general equipment but including communication equipment, is adequate.

Interest during Construction

[33] The Commission engineers included 9 per cent for interest during construction on structural parts of the electric property exclusive of general equipment but including communication equipment, based on a 3-year construction period and a 6 per cent rate of interest. The 9 per cent allowance for interest assumes that the cost of construction is spread evenly over the 3-year period so that, for the purpose of the computation, only one-half the money would be required for the entire period or all of the money for half the period. They also included 12 per cent on the value of land as a construction overhead on the theory that the land would be acquired, on the average, two years before being placed in use and producing revenues. Rates of 3¾ per cent and 2 per cent were applied to steam-heating and water properties, respectively, based on fifteen and eight months' construction periods and 6 per cent interest rate. Rates of 7½ per cent and 4 per cent were applied to the respective land accounts. The same allowance as was made on the respective structural properties was also made on the respective general overhead items of preliminary, organization, legal, administrative, and miscellaneous expenditures; engineering and superintendence; and taxes during construction.

The computation of the engineers for the company for the item of interest during construction on the electric property was the same as that used by the Commission engineers. On the heating and water properties, the company engineers used 18- and 9-month construction periods, respectively, with a resulting 4.5 per cent and 2.25 per cent interest during construction allowance on both land and structural items exclusive of general equipment.

Both groups of engineers are in agreement as to the interest rate and are in agreement as to the length of construction period on the electric property. There is a small difference in opinion as to the time required to construct the steam-heating and water properties. The construction periods adopted by the Commission engineers appear ample and adequate and will be adopted in our determination of reproduction cost of the properties and the finding of fair value.

Taxes during Construction

The following amounts were included by the respective engineers for taxes during construction.

	Commission Engineers	Company Engineers
Electric property	$485,774	$631,062
Steam-heating property	13,990	7,463
Water property	148	132

The above allowances may be converted to the following percentages which are applicable to the respective

departments, exclusive of general equipment.

	Commission Engineers	Company Engineers
Electric property	.87%	1.00%
Steam heating	.40%	.25%
Water department	.06%	.05%

The Commission engineers' estimate is based upon the method adopted by this Commission in a previous case which method was declared unlawful by the supreme court of this state.

The engineers for the company evidently followed the court's opinion in State ex rel. St. Louis v. Public Service Commission, State ex rel. Laclede Gas Light Co. v. Same (1937) 341 Mo. 920, 22 P.U.R.(N.S.) 6, 110 S. W. (2d) 749, which criticized the Commission's adopted practice of calculating taxes during construction. The Commission, in determining the cost of reproduction for taxes during construction, will adopt the percentages used by the company engineers.

Miscellaneous Intangible Items

This item was included in the Commission engineers' appraisal to provide for rentals on leased property which it would be necessary to pay during the construction period.

The amounts included are:

Electric property in use	$9,636
Electric property not in use	2,232
Steam-heating property	4,576
Water property	11
Total	$16,455

The engineers for the company did not make a provision for costs of this type.

The Commission has considered these costs as proper in cost of reproduction estimates used in other cases. The Commission engineers' recommendation will be followed in the instant case.

IX. Accrued Depreciation

The amount of accrued depreciation was determined by the Commission engineers after a careful inspection of all parts of the property which could be examined, supplemented by a detailed study of past operating and maintenance records of the company applying to each particular item or group of items. In addition, consideration was given to age, type of construction, and usage of the items at the present and in past years.

The engineers for the company also made an intensive study of the property for the purpose of determining its physical condition. In making that determination they considered not only the wear and tear, or physical deterioration, but also functional and economic factors which tend to limit the present usefulness or future useful life of an article. The conditions applied to the various accounts by the respective engineers are shown in Table IX, following. [Table omitted.]

The differences between the two sets of figures are, for the most part, differences in judgment except on certain accounts, which have differences too great to be explained in such fashion. These appear to be caused by differences in theories.

There is a difference of 11.1 per cent in Account 331–Poles, Towers, and Fixtures. The engineer for the company testified that their investigation revealed nothing which would account for the low condition adopted for the poles by the Commission engineers and concluded that the Commission engineers' field inspection of the

poles was too superficial to determine the actual fact and was based too much on the outward appearance of the pole, which, according to the tests of samples of poles introduced at the hearing, has nothing at all to do with the strength of the pole. The laboratory strength test of samples of poles made by the engineers for the company were taken from poles that had been removed from service. The evidence shows that the samples were taken at points a considerable distance above the ground line of the pole. The ground line is the point at which most poles fail. The result of tests taken of samples at points other than the ground line do not appear to have much bearing on the condition of the poles. The Commission engineers produced a number of photographs of poles which constitute a part of the company's distribution system. The photographs were made of the worst poles. No attempt was made to portray a representative section of the poles in the distribution system by photographs.

The Commission is inclined to believe that its engineers, to a certain extent, gave too much consideration to the outward appearance of the poles. On the other hand, the company apparently based its estimate largely on the misleading results of tests made on samples of poles.

After careful consideration of the evidence, which is not conclusive on the part of either group of engineers, we are of the opinion that the Commission engineers' estimate is too low. We will use in determination of the accrued depreciation 85 per cent as the per cent condition of Account 331—Poles, Towers, & Fixtures.

[34] The greatest difference in per cent condition is found in Account 338—Meters. The Commission engineers used 71.3 per cent as compared to 95.0 per cent used by the engineers for the company.

Beginning in 1934, this company adopted a program of extensive change-over to modern out-door metering. Since the program of out-door metering has been adopted, many of the older meters which are not compensated for temperature correction and are not suitable for out-door metering are being discarded or junked. The Commission engineers held that this policy of the company injected an element of supersession and obsolescence in the determination of the condition of the Account 338—Meters, and, accordingly, adopted a low percentage to reflect the condition of the meter account.

The engineers for the company based their estimate of the condition of the meters on the company practice of testing and repairing its meters at regular intervals, ranging from five years, in the case of ordinary residence meters, to three months, in the case of large power meters. At the stated periodic intervals, each meter is tested and the defective parts are replaced, thus, according to the company engineers, restoring the meter "essentially to a new condition." Their theory is that the depreciation actually existing in the meter will, therefore, be only such as has accrued since the date of the last test and repair. The average cost of replacement on residence meters was $1.19 per meter, which represents accrued depreciation of 9.6 per cent in five years, or 4.8 per cent for one-half that period, so 95 per

cent was adopted as the condition of the meter account. The engineers for the company claim that the effect of the Commission engineers' deduction for obsolescence is to penalize the company for adopting a progressive policy of an out-door metering system which will be of some minor benefit to the consumers, and that it is a perfect example of improper recognition of obsolescence which has not actually occurred.

We are of the opinion that the estimate of the engineers for the company of the cost to restore the meter "essentially to a new condition" fails to give any weight at all to obsolescence or supersession, and although the meter, after being repaired, operates so as to measure correctly the quantity of the electrical energy used, the meter is by no means a new meter. The company's theory, of course, assumes that it is a new meter after all the repairs necessary are made. Such reasoning is erroneous.

[35] It is not deemed necessary to enter into a discussion to show that there is no relation between operating efficiency and the adopted condition of an item for valuation purposes. The Commission engineers' procedure of making a deduction for obsolescence, which deduction was based on actual knowledge of the company's operating practices, is a correct method of determining depreciation and had the Commission engineers not made such deduction, they would have been derelict in the performance of their duties. The Commission is of the opinion that the percentage adopted by its engineers is slightly low and will adopt 75 per cent as the over-all condition of Accounts 338—Meters, and 339—Meter Installation.

With reference to the above table of conditions it will be noticed that of the twenty accounts, the engineers of the company adopted percentages which are higher than Commission engineers in fifteen of the cases while the Commission engineers are higher in but five cases. If the company appraisal be adjusted so as to deduct the property due for retirement or property considered as not used in the Commission engineers appraisal it will be found that the engineers for the company have a higher per cent condition in eighteen of the twenty cases.

It is the experience of this Commission that estimates made by engineers for the various utility companies are generally higher than those prepared by the Commission engineers. Whether the difference is because of bias of one or the other or both groups, the record, as a general rule, does not disclose. In the instant case it has been pointed out that the Commission engineers are 5 per cent low on Account 331, and that 75 per cent condition should be used on Account 338 and 339—Meters and Installation. After making those adjustments to the Commission engineers' estimate of condition, and carefully considering all the evidence relating to depreciation, the Commission is of the opinion that 9 per cent is a proper percentage to use to reflect the depreciation as of July 31, 1935, of the depreciable electric property which is used in public service.

The over-all per cent condition of the steam-heating property as determined by the Commission engineers is 80.5 per cent. The company engi-

neers over-all per cent condition for all steam-heating department is 77.3 per cent. The difference between the engineers' estimates of accrued depreciation is more apparent than real. The company engineers included in their estimate of cost of reproduction property that they classed as "Due for Retirement" and in their estimate of the cost of reproduction less depreciation, this class of property was placed in zero per cent condition. Adjusting the company's appraisal on the basis of the Commission engineers' appraisal, we find the two engineers in substantial agreement. The above percentages are based on all steam-heating property—both used and nonused. Considering only the used and useful property as determined in the section on allocation we find the over-all per cent condition of depreciable property of the steam-heating system to be 81 per cent.

The record discloses that the two groups of engineers are only 1½ per cent apart on their respective estimates of accrued depreciation for the water property. We are of the opinion that an average of the two estimates of accrued depreciation is the proper percentage to use. Accordingly, we find and will use 7½ per cent as the accrued depreciation in the water properties.

X. Cost Trend

[36] The appraisals submitted in this case are as of July 31, 1935. In order that the Commission might have before it information as to changes in material and labor prices between the date of the appraisal and February 1, 1938, the Commission engineers and the engineers for the company made studies to determine cost trends between those dates. The over-all index to convert 1935 prices to 1938 covering land, all physical property, general overheads, materials and supplies, spare equipment, and cash working capital as found by the respective engineers follows:

	Commission Engineers	Company Engineers
Electric property	111.47%	112.51%
Steam heating	114.66	115.59
Water property	110.28	111.13

The percentages applied to the structural property, only, show an increase of 12.42, 15.24, and 10.52 per cent, respectively, by the Commission engineers, and 13.29, 17.46, and 11.27 per cent, respectively, by the company engineers.

Estimates made by the two groups of engineers are based on the same quotations. The difference in composite percentages of increase is attributable to the fact that the two appraisals are not identical.

The variation is not great. In determining the fair value of the property, the Commission will take into consideration the trend of cost in material and labor from the date of the appraisal to the date of our finding.

We are of the opinion that there has been no appreciable increase in the fair market value of land since the date of the appraisal and we will use in our finding of fair value of all of the property of the company our adopted valuation of land as found for July 31, 1935.

XI. Additions

In order to carry forward the investment in property from July 31, 1936, to December 31, 1937, the Commission accountants prepared P. S. C.

Accountants' Exhibits 3 and 4 which show, respectively, the allocated net additions for the periods August 1, 1936, to December 31, 1936, and January 1 to December 31, 1937. To bridge the gap between July 31, 1935, the date of the inventory, and July 31, 1936, the date of the audit, a similar statement of net additions was prepared from the accountants' working papers. The net additions to the various departments for the respective periods are as follows:

	Net Additions		
	Aug. 1, 1935 to July 31, 1936	Aug. 1, 1936 to Dec. 31, 1936	Jan. 1, 1937 to Dec. 31, 1937
Electric			
Total	$528,861	$779,311	$1,123,034
Heating			
Kansas City	(242,487)*	60,009	77,278
Water			
Brunswick	567	287	778
Carrollton	1,570	1,796	1,188
Total	2,137	2,083	1,966
Other states, departments, and not in use	92,581	136,972	468,715
Total	$381,092	$978,375	$1,670,993

*Includes $250,000 credit adjustment item. Parenthesis indicates credit.

The net additions since the appraisal date and the trend in prices applicable to said additions will be considered in the determination of fair value.

XII. Working Capital

Materials and Supplies

The Commission engineers' development for the items of materials and supplies was based on the average monthly balance for one year as reflected by the company's books and the amount derived in that manner was assumed to be indicative of the normal requirements. The company engineers' development of the total for materials and supplies was taken from the average monthly balance of the several stores accounts of the company for the twelve months ending July 31, 1936.

The amounts recommended by the respective engineers are as follows:

	Commission Engineers	Company Engineers
Electric department	$717,654	$856,619
Heating department	18,587	20,075
Water department	1,194	949

There was no cross-examination on the subject and the record does not disclose why the difference exists, the amounts having been developed in the same way. In view of the record on this subject it appears that it will be necessary to take the average of the two estimates for the item of materials and supplies. The allowance for material and supplies to be used by each of the departments is as follows:

	Adopted Materials and Supplies
Electric department	$787,137
Heating department	19,331
Water department	1,072

Spare Equipment

The Commission engineers inven-

toried and appraised spare parts and equipment owned and used by the company as follows:

	Cost of Reproduction	Reproduction Less Depreciation
Electric department ..	$99,741	$91,418
Steam heat department	3,692	3,457
Water department ...	1,551	1,395
Not Used in Public Service	2,836	2,793
	$107,820	$99,063
Company's figures are as follows:		
Electric department ..	$47,823	$36,961
Heat department	3,161	2,017
Water department ...	....	....
Not Used in Public Service	2,149	1,633
	$53,133	$40,611

The principal difference between the two is that an item of underground cable was considered as spare equipment by the Commission engineers but was considered as property used in public service by the company engineers. The property is included in the Commission engineers' appraisal as spare equipment with cost of reproduction of $53,227 and reproduction less depreciation of $45,786. The engineers for the company include this property on pages 895, 896 of company Exhibit A as property due for retirement with a total cost of reproduction of $46,777, and on page 901 of company Exhibit A as property due for retirement with a total cost of reproduction of $18,303.

We shall adopt for spare equipment the amounts included in the Commission engineers' appraisal.

Cash Working Capital

The Commission accountants presented their recommendations for cash working capital for the various departments and divisions of the company. The accountants stated that their calculations were based upon a study of the company's collection experience and the flow of cash to the treasurer after the rendition of service.

The company witness stated that he believed the accountants' computations followed generally accepted principles of determining provisions for cash working capital, and that they would be accepted without alteration.

In the absence of any objection to the accountants' recommendations we shall adopt them as being the proper allowances for cash working capital. The amounts follow:

Missouri electric department ...	$1,020,379.98
Kansas City heating department	68,269.21
Missouri water department	
Carrollton	2,457.99
Brunswick	1,324.67
Total	$1,092,431.85

XIII. Going Value

The company contended for the following going value allowances:

Electric department	$6,000,000
Steam-heating department	200,000
Water department	16,000
Total	$6,216,000

[37, 38] The company did not ask for a separate allowance for going value. In general, the company's claim for going value was based upon the development and growth of its properties and business, the coördination of the properties into a well-balanced system, the establishment of an earning capacity while maintaining low and reasonable rates, the development of a stable financial structure, and the organization of management and operating personnel capable of managing and operating the properties in the

best interests of the customers and owners of the company. The company introduced Exhibit "NN," a summary of decisions of this Commission and showing some decisions of Federal courts, courts of appeal, and the Supreme Court of the United States and the percentage that going value was to the fair value of the property before the allowance for going concern value in those cases.

According to the company, the Commission's allowances have approximated 9 per cent.

The Commission's staff made no estimate of the amount to be allowed for going value, nor did they make a recommendation relative to this intangible. The personal opinion of a commission engineer was that no allowance should be made for going concern value.

An engineer for the interveners testified that although he had appraised the Kansas City Power & Light property in 1925 and had recommended 13 per cent going value allowance, he had now changed his attitude about the matter and was now of the opinion that when a utility is appraised by competent engineers, which appraisal includes all the necessary overheads and is on the basis of having all customers attached, the property is appraised as a going concern and no further allowance for going concern value is necessary.

Although the parties are not in agreement as to the necessity of making an allowance for going value, this Commission is of the opinion that the "element of value" to which the United States Supreme Court refers in the statement that "there is an element of value in an assembled and established plant doing business and earning money over one not thus advanced" (Des Moines Gas Co. v. Des Moines, 238 U. S. 153, 165, 59 L. ed. 1244, P.U.R. 1915D, 577, 584, 35 S. Ct. 811) is an element that should be given consideration in the finding of fair value.

In many recent cases this Commission has held that a separate allowance need not be made, and we see no reason for deviating from our practice. In arriving at the fair value of the property, the intangible will be considered and an amount, which, in our opinion, is justified by the evidence and is reasonable, will be included for it.

XIV. Fair Value

We have set out hereinbefore in this report the fair market value of the company lands, the original cost of the company property other than land, the cost of reproduction and the companion general overheads, the percentages reflecting accrued depreciation in the used and useful property, the segregation of the properties used in public service, the net additions from the inventory date to December 31, 1937, and the trend in prices. Having given consideration to all the above findings and facts and to the fact that the properties are integrated and coördinated, with business attached, necessary records, and trained personnel, we are of the opinion that the fair value of the various properties used and useful in public service on December 31, 1937, is as follows:

Electric property	$71,000,000
Steam-heating property	4,000,000
Water property	
Brunswick	70,000
Carrollton	240,000

XV. Depreciation Reserve

[39, 40] The Commission accountants adjusted the electric depreciation reserve recorded by the company by eliminating, among others, several charges thereto, representing the retirement of certain properties. The items referred to are:

Reduction of book value of coal mine rights	$761,947.59
Preliminary expense—abandoned ice project	1,118.30
Original installation of lamps furnished customers	73,871.14
Retirement of street railway system, Carrollton	23,164.68
Total	$860,101.71

Counsel for the company offered in evidence by reference our decision in Case No. 1615 (1918) Re Kansas City Light & P. Co., a predecessor, 8 Mo. P. S. C. R. 223 et seq., and the decision of the supreme court of Missouri in the Empire District Electric Company appeal from an order of the Commission, affirmed by the circuit court of Cole county (339 Mo. 1188, 16 P.U.R.(N.S.) 437, 440, 442, 100 S. W. (2d) 509).

Company witness testified that it was the company's contention that the Commission had never definitely required the company to set up a depreciation reserve, and that, therefore, the Commission lacked jurisdiction to adjust the reserve in any respect whatsoever, citing the statutes of Missouri and the Empire District Decision, *supra*, in support thereof.

The statute, as interpreted by the supreme court, is the guide by which the question of jurisdiction, or lack thereof, may be decided. The court's decision, in this respect, reads in part:

"Turning to the statute we find that it gives the Commission power, after hearing, to make an order requiring the company to carry a depreciation reserve account, in an amount fixed by the Commission, subject to the regulatory control of the Commission. Such an order, if made, would operate prospectively and give the Commission regulatory control of the depreciation reserve created by its order."

And, further,

"The Commission contends that the company had no authority to withdraw any funds from the depreciation reserve without the content of the Commission, or expend any part thereof for any purpose except as prescribed by the Commission. *That would be true, if the Commission had exercised its regulatory powers, and by order required the company to carry a depreciation reserve, and fixed the amount thereof.*" (Italics ours.)

With this controlling opinion, the controversy resolves itself to the determination of whether or not the Commission has ever ordered this company, or a predecessor, to create a depreciation reserve. Witnesses for the company and the Commission cite our order in Case No. 1615, *supra*, in support of their respective contentions.

The report in Case No. 1615, *supra*, 8 Mo. P. S. C. R. at p. 280 recites:

"For the purposes of fixing rates, we calculate the annual depreciation allowance at 3.5 per cent on the present fair value of $9,300,000, plus additions of $624,564, or 3.5 per cent on $9,924,564. This amounts to $347,360 per annum."

The order in the same case at p. 297 recites in part:

". . . and the Commission on the date hereof having made and filed its

report containing its findings of fact and conclusions thereon, *which said report is hereby referred to and made a part hereof;* . . ." (Italics ours.)

And further, at p. 298:

"ORDERED 7. That the Commission fully retain jurisdiction of the parties and subject matter of this cause. . . ."

Further examination of the report and order in Case No. 1615 *supra,* reveals that the fair values of the electric and heating properties, at January 1, 1919, were $8,487,000 and $1,438,000, respectively, a total of $9,925,000, the same amount, in round numbers, as the base upon which the annual depreciation allowance was calculated. This base comprises the fair value of the property at August 31, 1918, and the additions and betterments to December 31, 1918.

From the foregoing facts we conclude that it was the intention of the Commission to require, and that it did require, the company to set aside, annually, 3.5 per cent of the fair value of its electric and heating properties at August 31, 1918, plus 3.5 per cent of subsequent additions and betterments, as a reserve for depreciation for the electric and heating properties.

The rates used by the company for accruing depreciation on its properties during the period January 1, 1919, to July 31, 1936, are shown on page 73 of Exhibit CA–1. These rates vary from 3.8 per cent to 3.0 per cent, and from 3.0 per cent to 2.0 per cent, for the electric and heating properties, respectively. Although the rate of accrual has at times fallen under that specified in Case No. 1615, *supra,* certain nondepreciable items have been included in the bases, which fact would tend to equalize the accrual; nevertheless a depreciation reserve created by charges to operating expenses for the ultimate retirement of electric property should not be used for the writing off of nonutility and customer-owned items.

We find that the accountants' adjustment, eliminating the foregoing charges to the electric depreciation reserve, was proper.

XVI. ANNUAL DEPRECIATION REQUIREMENT

The following amounts were recommended by the respective engineers as the annual depreciation allowances for the various departments.

	Commission Engineers As of July 31, 1936	Company Engineers As of Dec. 31, 1937
Electric	$1,510,000	$1,760,932
Water	2,700	5,998
Steam heating .	80,000	76,424

The Commission engineers suggested that allowances for additions to depreciable property added subsequent to July 31, 1936, be computed at rates of 2.85 per cent, 1 per cent, and 2.80 per cent, respectively. The company recommendation was computed at the rates of 3.04 per cent, 2.10 per cent, and 2.65 per cent, respectively, of the book costs of the depreciable property of the electric, water, and heating departments. The engineers for the interveners estimated that an accrual rate of 2.5 per cent to 2.75 per cent should be sufficient to maintain the reserve for the electric property.

In the study which the Commission engineers made as a basis for their recommendations, a review was made of the growth of depreciable property,

the accruals and charges to the depreciation reserve, the growth of the credit balance in the reserve, the accrued depreciation in the property, the salvage obtained from retirements, the cost of removing retirements, and the property classified as not used in public service. They claim that had the accrual rates which they recommend been applied to the investment in depreciable property for the period of their study, January 1, 1919, to July 31, 1936, the amount accrued would have provided for materialized and accrued depreciation and for the retirement of a portion of the property classified as not used in public service.

The company claimed that the Commission engineers' study showed that if straight-line depreciation rates from the experience of the Union Electric Company as developed by the Commission engineers in their annual depreciation allowance study of that company were applied to Kansas City Power & Light Company depreciable property, a composite depreciation rate of 3.31 per cent would be obtained which may be compared with 3.56 per cent obtained by the use of straight-line percentages developed from the Kansas City Power & Light study. The exhibit shows that 3.56 per cent was adjusted to 3.38 per cent in order to be comparable to the 3.31 per cent and that although a similar figure of 3.34 per cent was developed in the Union Electric Case, it was not adopted by the Commission engineers since they recommended 3 per cent in that case.

The company also contended that about $4,000,000 of the retirements which the Commission engineers considered in their study were of property installed prior to 1918 and that, because of changes in price levels, retirements of older property should be adjusted upward in the calculation that the Commission engineers made in determining the percentages for annual depreciation.

The record clearly shows that the Commission engineers rejected straight-line percentages as bases for annual depreciation requirement for the reason that the determination of depreciation in their appraisal was on the basis of observed rather than straight-line depreciation. The percentage developed by the Commission engineers in their straight-line study in the Union Electric Company Case was not the percentage they recommended in that case. They recommended a flat sum of $1,800,000, which amount was approximately 3 per cent of the depreciable property.

It is interesting to note that the Commission did not adopt the 3 per cent recommendation of its engineers in the Union Electric Case, but adopted the amount recommended by the Union Electric Company witness, which was about 2.85 per cent.

The charge of the company that the Commission engineers erred in not trending the retirements of property installed prior to 1918 so as to reflect costs subsequent to 1918 has some merit. Of course, such a procedure, when carried to its logical conclusion, would require trending of investment in depreciable property as well as the retirements so that the effect of the adjustment would be lessened.

The engineer for the company based his estimate of the annual depreciation allowance upon his experience in determining for a large number of utility

companies the amount they should set aside annually to meet the requirements of investment bankers and the Bureau of Internal Revenue. This work required the compilation of mortality data relative to the life of utility property.

With this background of experience he estimated the anticipated life in years and the per cent of salvage to be obtained for the various accounts of depreciable property owned by the Kansas City Power & Light Company. With these estimates as a basis, he determined a rate for each account which was applied to the original cost of depreciable property thus determining the total amount for each department and the rates of 3.04 per cent for electric, 2.65 per cent for heating, and 2.10 per cent for water.

The company witness claimed that the resulting estimate is in close accord with the amounts now set up by the company which have been accepted over a period of years by the Bureau of Internal Revenue for income tax deductions.

He also stated that the rates used by the company are less than those allowed by the Bureau of Internal Revenue for many utilities with which he was familiar.

The company witness also presented the comparison that if the allowance be based upon the cost of reproduction less depreciation, which he assumes controls fair value, the amount to be set aside annually would be some $200,000 or $300,000 greater than his recommendation which is based upon book cost. The implication is that the estimate is conservative.

The recommendation of the engineer for the interveners was based upon the high degree of maintenance indicated by the conditions found by the respective appraising engineers. He stated that there has been much study of the life of various items of property, and that Commissions have been adjusting annual accruals to conform with the actual experience on the property in question. He also cited the Washington Consent Decree and the Dallas Plan under which the accruals to the depreciation reserve are gradually decreased as the ratio of the credit balance in the reserve to the investment in depreciable property increases above certain agreed percentages.

P. S. C. Accountants' Exhibit No. 1 indicates the company acquired the property in 1916 after which it adopted a policy of construction and rehabilitation. Subsequent to 1917 the property was rebuilt in order to provide unification of system frequency and voltage.

The period which Commission engineers used in making their estimate is one during which an unusually large quantity of property was retired, as occasioned by the rehabilitation and rebuilding. Whether retirements in the future will keep pace with past experience, is, of course, not a problem which may be positively answered, but in the light of company history it is not likely that the rate of retirement will become greater. In addition, the introduction and use of better materials of construction, such as treated poles instead of untreated poles, should result in lowered retirement rates in future years.

[41, 42] The estimates of depreciation submitted in the appraisals of the respective engineers were not based upon straight-line theory. We are of

the opinion that depreciation and the annual depreciation allowance are closely related and that they should not be computed by unlike methods. The accumulation of a reserve by straight-line percentages will generally build up a fund far in excess of the accrued depreciation. The method of calculating the annual rate suggested by the Commission engineers tends to consider the accrued depreciation and to provide for the property which has become nonuseful. Although, as pointed out by the company, the Commission engineers' method fails to consider changes in price levels, it covers a period of extensive reconstruction and provides for the retirement of purchased property which may not have been worn out entirely while owned by the Kansas City Power & Light Company. Neither do the Commission engineers give any weight to the change in type of construction materials which in certain instances, such as poles, are now considerably longer lived than formerly.

Although the estimate prepared by the company engineers does not differ greatly from the Commission engineers' estimate, we deem it best to reject the former because of the straight-line method followed.

A glaring discrepancy in the company calculation is found in the pole account for which the expected life for annual depreciation allowance purpose was estimated to be twenty-five years with no salvage, while for the purpose of determining depreciation, the life expectancy of poles was thirty-four and four tenths years with 30 per cent salvage. Of course, the pole account includes items other than poles, but poles represent more than 50 per cent of the account. The use of two measures for depreciation is entirely unwarranted.

[43] The testimony of the engineer for the interveners cannot be used as a basis for establishing an allowance. The Commission agrees with his opinion that annual accruals should be adjusted to conform with the actual experience on the property in question. It appears that the estimate of the Commission engineers is the closest approach to the company's actual experience.

After careful consideration of the record made in this case on the subject of annual depreciation requirement, the Commission concludes that the reserve is now more than ample to cover the amount of accrued depreciation in the property and that at this time there appears to be no need for a further increase in the ratio of the reserve to the depreciable investment.

[44] It appears that if the accruals to the reserve are adjusted to the extent that they will provide for retirements made currently and also keep the ratio of the reserve to investment in depreciable property fixed at its present level, the company and investor will be amply safeguarded, a sufficient buffer will be provided for large, unforeseen retirements, and a proper and equitable contribution will be made by the consumer for the property worn out in his service.

The Commission will require the company to set aside annually for its electric department reserve $1,585,000 plus 2.85 per cent of net additions of depreciable property subsequent to December 31, 1937; for its steam-heating department $85,000 plus 2.80 per cent of net additions of depreciable proper-

ty subsequent to December 31, 1937; and for its water department at Brunswick $650 plus one per cent of net additions of depreciable property subsequent to December 31, 1937; and at Carrollton $2,100 plus one per cent of net additions of depreciable property subsequent to December 31, 1937.

XVII. Revenues and Expenses

The Commission accountants introduced several exhibits showing their estimates of the operating revenues, operating expenses, and net revenues available for deperciation and return. Exhibit CA–1, pp. 78 et seq., shows the foregoing items for each of the operating divisions and departments, after applying the accountants' adjustments, for the year ended July 31, 1936. Exhibit CA–3 shows further adjustments of the net revenues stated in Exhibit CA–1, giving effect to changes in revenues and expenses subsequent to the date of Exhibit CA–1. Exhibit CA–3, Statement No. 5, shows the net revenues for the year ended December 31, 1937, Missouri electric department, with all of the aforementioned adjustments applied. Statement No. 9 of this exhibit shows the effect on the Missouri electric department of still other adjustments of expenses, which are applicable to the net revenues for the year ended December 31, 1937.

Neither the company nor the interveners offered statements of revenues and expenses, however both parties contend that there are certain inaccuracies included in the accountants' findings.

The accountants' estimates of net annual revenues available for depreciation and return, and the periods involved, follow:

Missouri electric department—December 31, 1937	$7,629,928.54
Kansas City heating department—July 31, 1936	53,800.52
Missouri water department—July 31, 1936	
Carrollton	13,567.03
Brunswick	720.84
Total Missouri water	$14,287.87

It will be observed that the periods in the foregoing table are not comparable; however, it is apparent that the heating and water departments are not earning an excessive rate of return and no rate revision is in order. Therefore, we shall confine our consideration to the net revenues of the electric department for the year ended December 31, 1937, as shown in the table.

For the purpose of this chapter we shall forego discussion of the uncontested adjustments of the company's records included in the foregoing table, and consider only the adjustments included which are in controversy, the adjustments shown on Statement No. 9 of Exhibit CA–3, an additional item of income taxes, and rate revisions not reflected in the table.

Dues and Donations

[45, 46] The accountants eliminated from operating expenses certain dues and donations following a well-established precedent of the Commission.

The company contends that the greater portion of the elimination, in the amount of $59,045.03, should be restored to operating expenses for the reasons that the items included are revenue-producing; that they are used for purposes consistent with the spirit of the Federal Social Security Act;

that the Federal and state governments have amended their corporation tax laws to permit the deduction of these or similar contributions; and that they are a legitimate charge to its consumers for sundry other reasons.

While we grant that there may be merit in the company's contentions, we have not lost sight of the reasons for our disallowance of similar items in previous cases. It is true that the great majority of these contributions are used for noble and humanitarian purposes, but it is our opinion that if the consumer wishes to donate to such organizations, that is his concern and should be a voluntary act on his part, and his contributions should not be duplicated in some instances and in others made compulsory and disguised by inclusion in rates for utility services. Further, the company contends that to refuse to so contribute would jeopardize its public relations and standing in the community. We agree with this argument, but we would enlarge on the statement and say that it is our opinion that such contributions do not increase the essential cost or the value of the service rendered, but the benefits therefrom inure to the profit of the stockholders of the company, who should bear the expense.

We shall not reinstate the dues and donations eliminated by the accountants.

Management Fee

[47, 48] The Commission accountants eliminated from operating expenses the management fee in the amount of $48,508.25, paid by the company to the United Light and Power Engineering and Construction Company, for all departments. The accountants stated that if the company should present evidence that this sum represented the actual cost of services rendered, and that the services were necessary, then the amount should be reinstated in operating expenses. Statement 9 of Exhibit CA–3 shows the amount which would be restored to the Missouri electric department in the event the charge is deemed proper.

The company witness offered evidence in substantiation of the propriety of the fee. Major services furnished were annual audit, savings on purchases (quantity discounts), salaries of officer and assistants, legal services, and expenses in Case No. 6576 (1/10 total).

In addition to the foregoing items, the witness testified that there were many additional services performed, which were not of record and which could not be appraised, but which would make a total well in excess of the payment.

The witness further stated that the United Company had filed its intention to register with the Securities and Exchange Commission, pursuant to the provisions of the Public Utility Holding Company Act of 1935, which provisions prohibit a holding company from selling goods or services to a subsidiary at more than cost.

The cross-examination of the company witness questioned the necessity of certain items of service included in the table. In view of the fact that the services were actually rendered, and in the absence of any probative evidence that they were not necessary, we believe the question to be one of management and one which we shall not challenge. The other items in the table are costs which the company

would definitely have to meet, were there no management contract. We will accept the filing of intention to register with the Securities and Exchange Commission as conclusive proof that the services were rendered at cost.

We shall, therefore, reinstate in operating expenses the proportionate part of the management fee applicable to the electric department in Missouri, $46,928.46, as shown on Statement No. 9 of Exhibit CA–3.

Cost of Calendars

[49] The Commission accountants included in operating expenses the total cost of printing and delivering the calendars the company distributes annually, throughout its territory. The total cost involved amounts to approximately $6,100.

Counsel for the interveners offered one of the calendars in evidence, and brought out by cross-examination that while the face of the sheets of the calendar embodied legitimate advertising, the reverse sides were confined to advertising matter foreign to the promotion of the sale of energy. The Commission witness testified that advertising of the nature of that shown on the reverse of the calendar was grounds for excluding the cost from operating expenses.

We are of the opinion that the proper disposition of the cost of the calendars is an apportionment based upon the information contained therein. This results in assigning one-half of the cost, represented by the face side of the calendars, to new business advertising operating expense, and one-half, represented by the reverse side, to deductions from gross income.

We shall, therefore, eliminate from operating expenses one-half of the cost of the calendars included therein or $2,100.

Increased Social Security and Unemployment Taxes

The Commission accountants stated that they had not included in operating expenses any payments under the Federal Social Security Act. They included a table showing the annual payments, projected through 1949 at which time the rate was to have become stabilized.

As this report is being written, Congress has amended the law so that there will be no increase in rates until 1942.

It is our opinion that a proper allowance for this item is the rate in effect during the years 1938, 1939, 1940, applied to the taxable payroll during the audit period.

We shall increase the electric operating expenses in Missouri by the difference between the 1937 estimate, $79,813.44, and the estimate for 1938, 1939, $106,417.92, or an increase of $26,604.48.

Additional Federal and State Income Taxes

The company has recently settled additional Federal income and excess profits tax liabilities with the Bureau of Internal Revenue, for the years 1935 and 1936. The adjustment was occasioned by the Federal authorities' disallowance of a claim for depreciation in excess of that recorded by the company.

For the year 1937, the period under review in this report, the additional taxes payable amount to $84,802.03.

Federal, and $7,279.75, state of Missouri.

We shall, therefore, increase operating expenses of the Missouri electric department $82,423.95, its proportionate share of the above amounts.

Miscellaneous Minor Items

Statement No. 9 of Commission accountants' Exhibit No. 3 shows several minor uncontested adjustments of increased operating expenses which are to be considered in addition to those previously discussed. A description and the amounts of such items, all applicable to the Missouri electric department, follow:

Sales tax increase applicable, 1/1/37 to 6/8/37	$1,612.31
Additional Federal tax on energy	3,816.59
Freight increase—3/8/38	2,945.37
Reallocation of property	15,941.35
Additional regulatory Commission expenses	6,229.73
Total	$30,545.35

We shall increase operating expenses of the Missouri electric department by this sum.

Rate Reductions

As set forth hereinbefore, certain rate reductions have become effective subsequent to December 31, 1937. Therefore, they are not reflected in the accountants' estimate of net revenue available for depreciation and return.

The application of the rate reductions based on company reports and estimates to the Commission, amounting to $1,083,693, to the net revenue available for depreciation and return at December 31, 1937, will have an important bearing in this case as indicated under "Conclusion" in this chapter.

Conclusion

Summarizing our findings for operating revenues, operating expenses, and net operating revenues available for depreciation and return for the Missouri electric department for the year ended December 31, 1937, and giving effect to subsequent rate reductions, we have the following:

Accountants Net Revenues Available for Depreciation and Return	$7,629,928.54
Increase	
Cost of calendars	2,100.00
Decrease	
Management fee	46,928.46
Social security and unemployment taxes	26,604.48
Additional income taxes	82,423.95
Rate reductions	1,083,693.00
Miscellaneous minor items	30,545.35
Total—Net revenues available for depreciation and return	$6,361,833.30
Less—Annual depreciation provision—(Chap. XVI)	1,585,000.00
Net revenue available for return	$4,776,833.30

As stated hereinbefore, we have not considered the net revenue available for depreciation and return on the heating and water properties; however, for purposes of record, we tabulate the following for the year ended July 31, 1936.

	Kansas City Heating	Carrollton Water	Brunswick Water
Net revenue available for depreciation and return	$53,800.52	$13,567.03	$720.84
Less annual depreciation provision (Chap. XVI)	85,000.00	2,100.00	650.00
Net revenue available for return	$31,199.48*	$11,467.03	$70.84

* Deficit.

XVIII. Rate of Return

[50–52] A public utility corporation is entitled to charge rates for service that will produce, over and above reasonable operating expenses including depreciation, a fair rate of return upon the present fair value of the property devoted to public service.

In determining a proper rate of return, consideration should be given to all relevant factors and the result should be one which, when considered in the light of past, present, and probable future conditions, will not place undue burden upon the consumers or the company.

We have weighed the evidence submitted by the company in support of its claim for a rate of return of 7 per cent and that submitted by the interveners who recommended a rate of 5½ per cent.

After considering all the evidence germane to the subject, we find that in order to furnish satisfactory service to the consumers and reasonable protection to the utility, a rate of return of 6½ per cent should be allowed on the present fair value of its property devoted to public service.

XIX. Conclusion

On the basis of the present fair value of the Missouri electric property of $71,000,000, a 6½ per cent return would yield $4,615,000. The estimated net annual revenue available for return on the basis of the year 1937, after making adjustments and taking into consideration rate reductions heretofore mentioned, will be at least $4,776,833.30. This calls for a further rate reduction.

NEW YORK DEPARTMENT OF PUBLIC SERVICE, STATE DIVISION, PUBLIC SERVICE COMMISSION

Re New York Telephone Company et al.

[Case No. 9688.]

Discrimination, § 181 — Telephone toll rates — Differences in distance steps.

A wide divergence between charges for telephone toll messages over distances in one step of a rate schedule and charges in the next lower step, constituting a radical difference in charges for similar services, is unjustly discriminatory.

Rates, § 586 — Telephone toll — Initial and overtime — Distance steps.

Discussion of plan for changing initial period and overtime charges in telephone toll rate schedule in order to reduce a wide divergence between charges in one step and charges in the next lower step, p. 244.

Rates, § 582 — Telephone — Toll charges — Divergence between steps — Charts.

Charts showing divergence between charges in different steps of a telephone toll rate schedule, p. 247.

[July 11, 1939.]

RE NEW YORK TELEPHONE CO.

PROCEEDING *on motion of Commission as to toll rates and charges; changes made in toll rate schedules to eliminate wide divergence between steps.*

BREWSTER, Commissioner: This proceeding was instituted for the purpose of investigating the divergence in charges for toll messages, particularly for messages which include overtime, over routes of between 22 and 34 miles.

The rates for toll messages within New York state, with but few exceptions, are based upon a mileage schedule with the result that the rates for messages of like distances over all routes are the same. The following schedule shows the mileage schedule steps, the initial period rates, and the overtime charges for station-to-station messages for distances up to 120 miles:

Distance	Initial period Rate	Initial period Minutes	Overtime Rate	Overtime Minutes
Up to 8 miles	$ .10	5	$ .05	3
More than 8 miles but less than 16 miles	.15	5	.05	2
More than 16 miles but less than 22 miles	.20	5	.05	2
More than 22 miles but less than 28 miles	.25	5	.05	1
More than 28 miles but less than 34 miles	.30	3	.10	1
More than 34 miles but less than 40 miles	.35	3	.10	1
More than 40 miles but less than 48 miles	.40	3	.10	1
More than 48 miles but less than 64 miles	.45	3	.15	1
More than 64 miles but less than 80 miles	.50	3	.15	1
More than 80 miles but less than 90 miles	.55	3	.15	1
More than 90 miles but less than 100 miles	.60	3	.20	1
More than 100 miles but less than 110 miles	.65	3	.20	1
More than 110 miles but less than 120 miles	.70	3	.20	1

It will be noted that the initial period rate progresses in steps of 5-cent increases, and that the initial period is uniformly three minutes except for the four lowest steps where it is five minutes. The overtime charge for these four lowest steps is 5 cents per unit but the unit of overtime progressively decreases from three minutes to one minute. Beyond the four lowest steps the overtime period is uniformly one minute and the overtime charge per minute is one-third of the initial period rate computed to the next lowest multiple of 5 cents where one-third of the initial period rate is not a multiple of 5 cents. The charges for station-to-station toll messages for periods up to eleven minutes for distances up to 120 miles are shown graphically on Chart I.

From this chart it will be seen that the widest divergence occurs between the 22–28-mile and the 28–34-mile steps. This divergence is such that for messages of five minutes or more the charge in the 28–34-mile step is just twice that in the 22–28-mile step. Such wide divergence does not occur in the schedule of charges for person-to-person messages.

The divergence between the charges for messages above the initial period at any point in the schedule is caused by a change in the overtime rate or in the length of the initial period. The divergence between the 22–28-mile and the 28–34-mile steps is particularly pronounced as at this point both causes of divergence are present, i. e., an increase in the overtime rate from 5

cents to 10 cents per minute and a decrease in the initial period from five minutes to three minutes.

This wide divergence could be overcome by an overtime charge per minute between 5 cents and 10 cents but this does not appear feasible in view of the fact that the company's coin box equipment is designed to receive amounts only in multiples of 5 cents. More than 120,000 of the company's telephone stations are equipped with coin boxes. Also the inconvenience of other than 5-cent multiples probably would be objectionable to the public. Increases of 5 cents per minute in overtime charges are constant in the present schedule at every third rate step above 28 miles. While this occurs at every third step, the increase from 5 cents to 10 cents has a more pronounced effect than other 5-cent increases as it is an increase of 100 per cent, whereas the percentage increase diminishes as the distance increases.

There were presented in evidence descriptions of several methods by which the divergence in question might be reduced. There follows an outline of each of these methods.

One method suggested by the telephone company is to reduce the initial period for all messages up to 28 miles from five to three minutes. While this method would reduce materially the divergence between the 22–28-mile and the 28–34-mile steps, it would increase the annual cost to the public of toll service by some $900,000 and would be contrary to the natural characteristic of longer conversations over the shorter distances. This characteristic is given recognition in the longer initial periods for the shorter distances in the present schedule.

Another suggestion by the telephone company is to reduce the initial period for the 16–22-mile step from five to four minutes and for the 22–28-mile step from five to three minutes, and to increase the overtime charge on messages in the 16–22-mile step from 5 cents for two minutes to 5 cents per minute. This plan would reduce the divergence between the 22–28-mile and the 28–34-mile steps to the same extent as the plan outlined above. However, it would increase the costs of toll service about one-third as much, or $313,000.

A third plan suggested by the telephone company is merely to reduce the initial period on messages in the 22-28-mile step from five to four minutes. By this plan the divergence in question would be reduced only slightly and the costs of toll service would be increased $54,000 per year.

A plan suggested by the Commission's engineer reduces the divergence between the 22–28-mile and the 28-34-mile steps more than any of the other suggestions and at the same time does not disturb materially the present toll schedule. This plan consists merely of increasing the initial period of the 28–34-mile step from three to five minutes and of the 34–40-mile step from three to four minutes. It is estimated that this plan would reduce toll revenues by about $135,000 with no increase at any point.

In addition to the revenue loss, objection to this plan was made on the technical ground that it violates the principle of overtime charges, that the charge per minute of overtime shall not exceed the average charge per minute during the initial period. By extending the initial period of the 28–34-

mile step (for which the initial period rate is 30 cents) to five minutes, the initial period rate per minute becomes 6 cents, whereas the overtime charge is 10 cents per minute. By increasing the initial period of the 34–40-mile step (for which the initial period rate is 35 cents) to four minutes, the initial period rate per minute becomes 8¾ cents, whereas the overtime charge is 10 cents per minute.

This objection can be overcome largely by making the initial period in the 28–34-mile step four minutes (instead of five minutes as provided in the Commission's engineer's plan) and the overtime rate 5 cents per minute instead of 10 cents. Then only in the 34–40-mile step would the overtime per minute (10 cents) exceed the average charge per minute (8¾ cents) during the initial period. The plan suggested by the Commission's engineer with these modifications is shown graphically on Chart II.

The extent to which each of the several plans suggested would reduce the wide divergence in the present toll schedule may be expressed in the ratios of the charges at the upper limit of the divergence to the charges at the lower limit. The following table shows such ratios of the present schedule and of each of the suggested plans:

		Plans suggested by New York Teleph. Co.		Plan suggested by Commission's engineer	
Minutes	Present schedule	First two plans (same ratios)	Third plan	As submitted	As modified
3	$1.20	$1.20	$1.20	$1.20	$1.17
4	1.60	1.33	1.60	1.20	1.17
5	2.00	1.43	1.67	1.20	1.29
6	2.00	1.50	1.71	1.33	1.38
7	2.00	1.56	1.75	1.43	1.44
8	2.00	1.60	1.78	1.50	1.50
9	2.00	1.64	1.80	1.56	1.54
10	2.00	1.67	1.82	1.60	1.58
11	2.00	1.70	1.83	1.64	1.61

It will be observed that the plan suggested by the Commission's engineer and the modification thereof reduce the wide divergence to about the same extent, and that both of these arrangements reduce the divergence more than any of the suggestions of the New York Telephone Company. The Commission's engineer's plan, as modified, differs from the others in that the widest remaining divergence occurs between the 28–34-mile and 34–40-mile steps, whereas in the present schedule and in all of the other plans suggested the widest divergence occurs between the 22–28-mile and the 28–34-mile steps.

Of the several plans suggested the Commission's engineer's plan, as modified, appears to be the most feasible. It does not appear that any plan can be devised which does not have some objectionable features. Thus, we are confronted with the relative importance of the divergence in the present schedule as compared with the objectionable features in what appears to be the most feasible plan of reducing the divergence.

The divergence in the present schedule is such that for messages of five minutes or more the charge in the 28–34-mile step is just twice that in the 22–28-mile step. This is a radical increase between adjacent rate steps.

On the other hand, the objections raised to the plan suggested by the Commission's engineer would apply, although not with the same force, to the modification thereof as outlined herein. These objections consist of (1) the overtime charge per minute of 10 cents would exceed the average charge per minute of 8¾ cents during the initial period in the 34–40-mile step, (2) the alleged operating difficulties resulting from differences between the intrastate and interstate schedules, and (3) the loss in toll revenue of about $200,000.

No toll user should object because the overtime charge per minute in the 34–40-mile step exceeds the average charge per minute during the initial period, since, through the lengthening of the initial period from three to four minutes, he would be getting an additional minute of conversation without additional charge. This amounts to a reduction of 10 cents in the total charge for all messages of over three minutes in the 34–40-mile step.

At the present time the rate schedules for intrastate and interstate toll messages are the same except for the distances in the mileage steps. For example, the 30-cent initial period rate has the same initial period and the same overtime charge per minute in both schedules, differing only in the distances covered in this step in the two schedules. In quoting toll rates or computing toll charges the operator is not concerned with the particular distances but rather with the initial period rate between the points in question. Knowing the initial period rate, the total charge for a message including overtime is determined by reference to a table of precomputed charges. Some confusion and errors might result from having different initial periods for the 30-cent and 35-cent rates in the interstate and intrastate schedules.

The effect of the Commission's engineer's plan, as modified, upon the revenue of the telephone companies is not relatively substantial. The reduction of some $200,000 represents but six-tenths of 1 per cent of total toll revenues of about $32,500,000.

I believe that the wide divergence between the 22–28-mile and the 28–34-mile steps in the present toll schedule is a more serious fault than the combined objections to the plan of the Commission's engineer, as modified.

Based upon the facts of record, I find that because of the differences between charges for similar service, differing only as to distance between toll rate centers, for example, the divergence between the charges in the 22–28-mile and the 28–34-mile steps, such charges are unduly and unreasonably preferential and prejudicial and unjustly discriminatory.

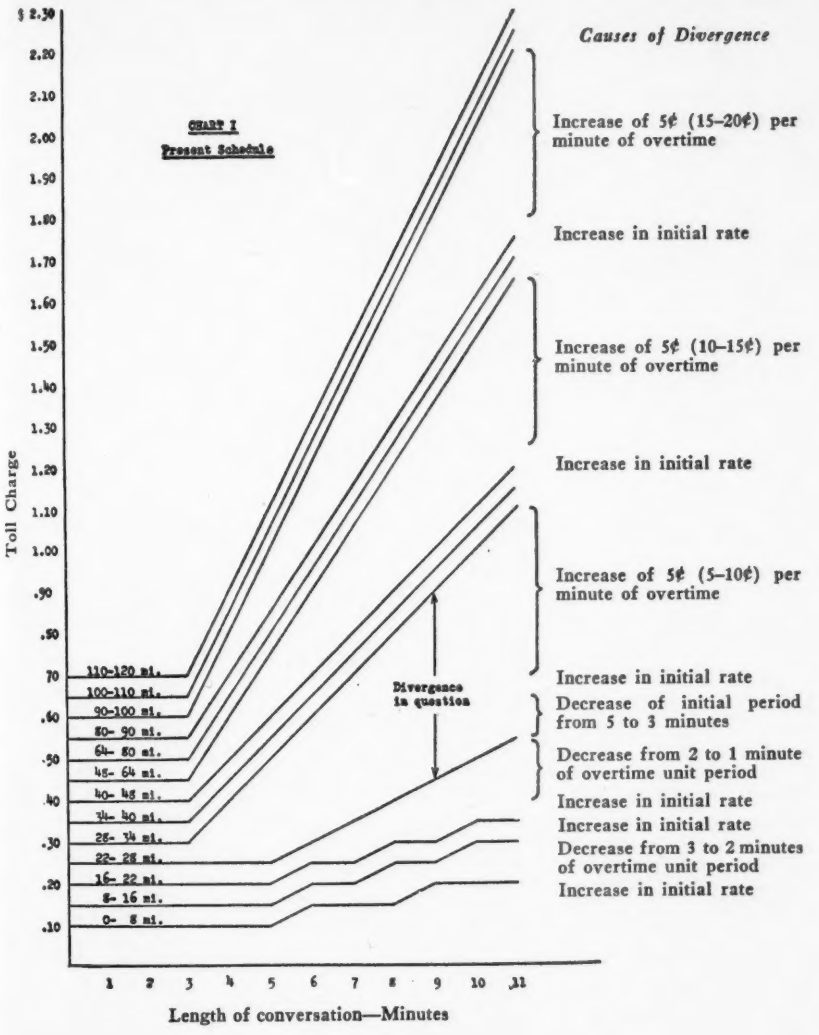
I recommend that an order be made directing that the following changes be made in the toll rate schedules of the telephone companies named in the title of this proceeding:

1. Increase the initial periods of the 28–34-mile and 34–40-mile steps from three minutes to four minutes.

2. Reduce the overtime charge in the 28–34-mile step from 10 cents per minute to 5 cents per minute.

Chairman Maltbie, and Commissioners Van Namee and Lunn concur; Commissioner Burritt not present.

CHART I


$ 2.30
2.20
2.10
2.00
1.90
1.80
1.70
1.60
1.50
1.40
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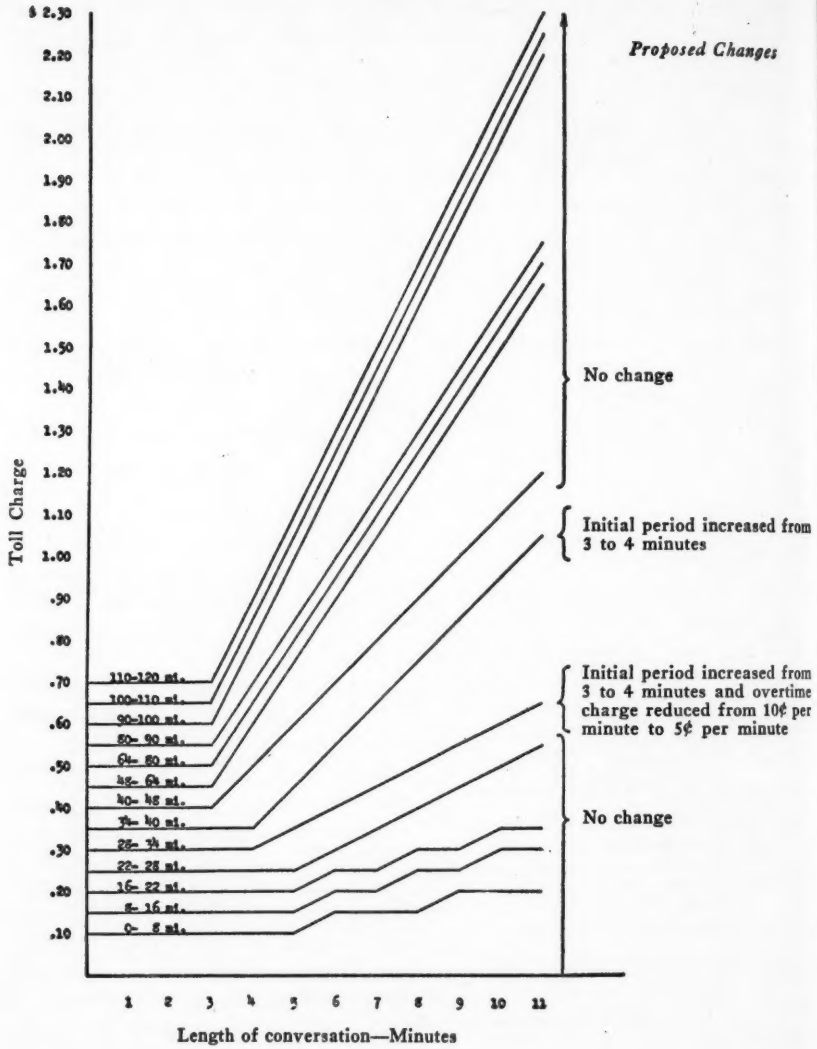
1.20
1.10
1.00
.90
.80
.70
.60
.50
.40
.30
.20
.10
Toll Charge
CHART I
Present Schedule
110-120 mi.
100-110 mi.
90-100 mi.
80- 90 mi.
64- 80 mi.
48- 64 mi.
40- 48 mi.
34- 40 mi.
28- 34 mi.
22- 28 mi.
16- 22 mi.
8- 16 mi.
0- 8 mi.
Divergence in question
1 2 3 4 5 6 7 8 9 10 11
Length of conversation—Minutes
Causes of Divergence
Increase of 5¢ (15–20¢) per minute of overtime
Increase in initial rate
Increase of 5¢ (10–15¢) per minute of overtime
Increase in initial rate
Increase of 5¢ (5–10¢) per minute of overtime
Increase in initial rate
Decrease of initial period from 5 to 3 minutes
Decrease from 2 to 1 minute of overtime unit period
Increase in initial rate
Increase in initial rate
Decrease from 3 to 2 minutes of overtime unit period
Increase in initial rate

NEW YORK DEPARTMENT OF PUBLIC SERVICE

CHART II



UNITED STATES DISTRICT COURT, E. D. KENTUCKY

Kentucky Natural Gas Corporation

v.

Public Service Commission of Kentucky et al.

[No. 906.]

(28 F. Supp. 509.)

Judgment, § 1 — Declaratory judgment — Federal and state regulation.

1. An actual controversy entitling complainant to invoke the Declaratory Judgment Act exists in a proceeding for judgment declaring complainant's business to be immune from state regulation, where the complainant contends that it is engaged solely in interstate commerce as against the contention of the state Commission that the complainant is engaged in intrastate commerce in certain activities, and where the other prerequisites of Federal jurisdiction are present, p. 251.

Interstate commerce, § 37 — Regulation — Natural gas system.

2. Regulation of the business of a gas company is national rather than local, demanding a standard of uniformity attainable only through a single paramount authority, where the business is a closely integrated system which is mainly interstate in character, where regulation of one phase of its activities would affect the whole system, and where the sale and delivery of gas at wholesale from its interstate pipe line to local distributing companies constitutes an integral part of the major enterprise, commerce between the states, p. 252.

Interstate commerce, § 2 — Regulation by Congress — Gas business.

3. Congress rather than the states must prescribe the final and dominant rule governing interstate and intrastate activities of a gas company which are so related that the government of the one involves the control of the other, p. 252.

Interstate commerce, § 5 — Federal and state powers — Gas business.

4. The power conferred upon the Federal Power Commission to regulate interstate natural gas companies is paramount and excludes a state Commission from regulating the company's business even though some gas from the interstate system is sold in the state of origin, p. 253.

Interstate commerce, § 30.1 — State regulation — Assessments for Commission maintenance — Legality.

5. Assessments against an interstate gas company for the maintenance of a state Commission which has no constitutional power to regulate the company's business are unenforceable, p. 253.

Courts, § 15 — Jurisdiction over Federal Commission — Proper district.

6. The Federal Power Commission and its individual members in their official capacity are exempted from suit in any district other than the District of Columbia, p. 254.

[July 17, 1939.]

PROCEEDING *against the Kentucky Commission for declaratory judgment that complainant's gas business in Kentucky is immune from state regulation, wherein complainant seeks to make the Federal Power Commission a party defendant; motion to make Federal Power Commission a party dismissed and judgment entered in conformity with opinion.*

APPEARANCES: Cary, Miller & Kirk, of Owensboro, Ky., for complainant; Hubert Meredith, Attorney General, and J. W. Jones, Assistant Attorney General, for defendants; John T. Metcalf, U. S. District Attorney of Lexington, Ky., David W. Robinson, Jr., General Counsel, Federal Power Commission, of Columbia, S. C., Louis W. McKernan, Principal Attorney, Federal Power Commission, of New York city, and Robert M. Cooper, Special Assistant to Attorney General, for Federal Power Commission; Faurest & Faurest, of Elizabethtown, Ky., amicus curiæ.

FORD, D. J.: Complainant, a Delaware corporation, is engaged in the production and purchase of natural gas in the gas fields of western Kentucky and southern Indiana. By means of an extensive system of pipe lines, it transports the gas so procured in interstate commerce between the states of Kentucky and Indiana.

Kentucky gas is taken from what is known as the "Center" field in Hart county and other gas fields in that section of the state. The gas from this source passes immediately from gathering lines into a trunk pipe line several hundred miles in length, ranging from 8 to 12 inches in diameter extending from Hart county westward, then in a northern direction crossing the Ohio river near Henderson, Ky., and Evansville, Ind., thence northward through Indiana to a point beyond the cities of Terre Haute and Montezuma, where connection is made with the Indiana Gas Transmission line and the Panhandle Eastern Pipe Line.

Another supply of gas is derived from the "Troy" field in southern Indiana from which a similar pipe line crossing from Indiana into Kentucky at or near Cannelton conveys a continuous flow of gas under high pressure into Kentucky connecting with the first mentioned line at a point south of Henderson, where the Indiana and Kentucky gas is commingled and turned north to Indiana or south into Kentucky as the varying conditions of the business from time to time require.

A third source of supply is from the Panhandle Eastern Pipe Line in northern Indiana through which gas is received from the fields of Texas, Kansas, and other states of the Southwest.

A continuous flow of gas under high pressure is maintained at all times throughout the entire system. The system is so equipped with automatic mechanisms that when the pressure is higher in Kentucky than in Indiana the gas flows from Kentucky to Indiana, and when pressure is lower in Kentucky the direction of the flow is automatically reversed.

Along the course of this interstate pipe line complainant sells gas in Kentucky and Indiana at wholesale, under high pressure, at city gates, to many local public utility companies, which in turn reduce the pressure according to their needs and sell and distribute the gas at retail to domestic and industrial consumers. The complainant sells no gas directly to consumers. With the exception of the Western Kentucky Gas Company, a wholly owned subsidiary, the complainant has no interest in or connection with any local distributing company operating in Kentucky. From June 14, 1934, to December 31, 1937, the affiliated company distributed only 772,055 thousand cubic feet out of a total of 2,692,140 thousand cubic feet of gas sold by complainant in Kentucky during that period.

The evidence shows that although prior to 1938 the complainant secured approximately 70 per cent of its entire supply from the gas fields of Kentucky, only about 30 per cent of its gas was sold in Kentucky. It is obvious, however, that substantial variation in such conditions, from time to time, is inherent in the nature of the business. This is evidenced by the fact that in the first three months of 1939 from 47 to 53 per cent of the gas sold in Kentucky was brought in from outside the state, principally from the Panhandle Eastern Pipe Line. In order to be assured of adequate supply under all conditions, the complainant has made contracts for large supplies of gas from the Panhandle Eastern Pipe Line, has extended its gathering lines to new gas fields in Illinois, and has adopted the policy of taking gas ratably and proportionately from the several sources of supply.

[1] The defendant, Public Service Commission of Kentucky, has asserted and now asserts that, by virtue of § 3952-1 et seq. of the Statutes of Kentucky, it has the power and authority to exercise jurisdiction and control over the complainant with respect to all its Kentucky gas sales contracts, its Kentucky gas purchase contracts, its prices paid for gas and prices for which it sells gas in Kentucky and in all respects to regulate complainant's business in Kentucky as an intrastate utility. This litigation had its origin in two separate actions instituted by the complainant challenging the validity of certain orders made by the Commission by which it disclosed its purpose to exercise such jurisdiction. The actions were consolidated and by subsequent amendment of its bill of complaint the plaintiff converted the consolidated action into a proceeding under the Federal Declaratory Judgment Act, Judicial Code, § 274d, 28 USCA § 400, seeking a declaratory judgment that complainant's business in Kentucky is immune from such regulation as is threatened by the Commission for the reason that it would create a forbidden burden upon interstate commerce and an infringement

of the due process and equal protection provisions of the Fourteenth Amendment, USCA Const.

Since the institution of the action, Congress has passed the Federal "Natural Gas Act," approved June 21, 1938, 15 USCA §§ 717–717w, committing to the Federal Power Commission the regulation of all matters relating to the transportation and sale of natural gas in interstate commerce.

Complainant contends (1) that it is engaged solely in interstate commerce; (2) that its sale and delivery of gas from its interstate pipe lines, at city gates at wholesale, under high pressure, to local distributing companies is merely an incidental part of its interstate commerce and immune from state regulation or control; (3) that its business, being entirely interstate, is subject only to the regulation and control of the Federal Power Commission under the authority conferred by the Federal Natural Gas Act.

It is the contention of the defendant, Public Service Commission of Kentucky, (1) that, in transporting gas from fields in Kentucky to purchasers within the state, the complainant is engaged in intrastate business; (2) that such transactions are and should be treated as separate and distinct, notwithstanding their relation to interstate business, and as such are subject to regulation and control by the Kentucky Commission in all respects, as provided by the Kentucky Act.

It thus sufficiently appears from the record that there is an actual controversy entitling complainant to invoke the Declaratory Judgment Act. Ætna Life Ins. Co. v. Haworth (1937) 300 U. S. 227, 81 L. ed. 617, 57 S. Ct. 461, 108 A.L.R. 1000. Other prerequisites to Federal jurisdiction are present.

[2] The record shows that the business of the complainant is a closely integrated transportation system which is fundamentally and predominantly interstate in character from beginning to end. In structure and operation, such continuity exists throughout the system that regulation at one point or control of a single activity would necessarily affect the whole structure. The sale and delivery of gas at wholesale from the interstate pipe line to local distributing companies is an integral part of the major enterprise, commerce between the states. Under such circumstances, regulation in the public interest is national rather than local, demanding a standard of uniformity unattainable except through a single paramount authority. See State ex rel. Barrett v. Kansas Nat. Gas Co. 265 U. S. 298, 68 L. ed. 1027, P.U.R. 1924E, 78, 44 S. Ct. 544; Public Utilities Commission v. Landon, 249 U. S. 236, 63 L. ed. 577, P.U.R.1919C, 834, 39 S. Ct. 268; Mississippi Tax Commission v. Interstate Nat. Gas Co. (1931) 284 U. S. 41, 76 L. ed. 156, 52 S. Ct. 62; Public Utilities Commission v. Attleboro Steam & Electric Co. 273 U. S. 83, 71 L. ed. 549, P.U.R.1927B, 348, 47 S. Ct. 294.

[3] Congress has seen fit to exercise its authority over this particular type of commerce by the enactment of the Natural Gas Act. The commerce clause of the Constitution, USCA Const. art. 1, § 8, cl. 3, admits of no divided authority in the national field. "Wherever the interstate and intrastate

transactions of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the state, that is entitled to prescribe the final and dominant rule . . . ." See Currin v. Wallace (1939) 306 U. S. 1, 11, 83 L. ed. 441, 59 S. Ct. 379, 385, and cases cited therein.

[4] The established course of business being predominantly interstate, the mere fact that some gas from the interstate stream is sold and delivered in the state of its origin affords that state no superior power to regulate or control the transaction. Pennsylvania v. West Virginia, 262 U. S. 553, 67 L. ed. 1117, P.U.R.1923D, 23, 43 S. Ct. 658, 32 A.L.R. 300; Public Utilities Commission v. Attleboro Steam & Electric Co. *supra;* West v. Kansas Nat. Gas Co. (1911) 221 U. S. 229, 55 L. ed. 716, 31 S. Ct. 564, 35 L.R.A.(N.S.) 1193; United Fuel Gas Co. v. Hallanan (1921) 257 U. S. 277, 66 L. ed. 234, 42 S. Ct. 105.

The contention of the defendant that the cases, People's Nat. Gas Co. v. Pennsylvania Pub. Service Commission, 270 U. S. 550, 70 L. ed. 726, P.U.R.1926D, 187, 46 S. Ct. 371, and Lone Star Gas Co. v. Texas (1938) 304 U. S. 224, 82 L. ed. 1304, 24 P.U.R.(N.S.) 119, 58 S. Ct. 883, prescribe a different rule seems untenable. Those cases are distinguishable from the instant case in that in each case the predominant business involved was intrastate. Interstate commerce involved was so negligible as to be merely incidental to a course of business clearly local in character.

Cases upholding certain forms of state taxation affecting interstate facilities and activities employed within the state are not in conflict with these views. It has been uniformly held that those engaged in interstate commerce must bear their just share of the tax burden in the states of operation and that many forms of state taxation, properly directed to that end, are not inhibited when fairly apportioned to activities within the state. See Western Live Stock v. Bureau of Revenue (1938) 303 U. S. 250, 82 L. ed. 823, 58 S. Ct. 546, 550, 115 A.L.R. 944; Coverdale v. Arkansas-Louisiana Pipe Line Co. (1938) 303 U. S. 604, 82 L. ed. 1043, 58 S. Ct. 736; Milk Control Board v. Eisenberg Farm Products (1939) 306 U. S. 346, 83 L. ed. 752, 59 S. Ct. 528.

The courts recognize a wide distinction between properly apportioned taxation and direct regulation such as is here sought to be exercised. " . . . not every local law that affects commerce is a regulation of it in a constitutional sense . . ." Western Live Stock v. Bureau of Revenue, *supra,* at p. 259 of 303 U. S. Taxes affecting commerce only indirectly and remotely are not regarded as regulatory measures and hence admit of different treatment in the practical solution of the problem of reconciling conflicts which arise under our dual form of government.

My conclusion is that such local activities as are here shown to be present are insufficient to carry them into the field of state authority. Jurisdiction to regulate the business of the complainant herein involved has been conferred by Congress upon the Federal Power Commission. Its authority is paramount and exclusive.

[5] Exercise of regulatory and su-

pervisory functions in respect to the complainant's business not being within the constitutional power of the state Commission, it necessarily follows that assessments against the complainant for the maintenance of the Commission are unenforceable. In the case of Ingels v. Morf (1937) 300 U. S. 290, 294, 81 L. ed. 653, 57 S. Ct. 439, 441, it is said: "To justify the exaction by a state of a money payment burdening interstate commerce, it must affirmatively appear that it is demanded as reimbursement for the expense of providing facilities, or of enforcing regulations of the commerce which are within its constitutional power."

These conclusions, however, have no reference to the plenary power of the state Commission to regulate the distribution of gas by local distributing companies which purchase their supply at wholesale from the complainant, nor to the power of the Commission to require complainant to disclose to the Commission all information appropriate to any inquiry as to the relations between the complainant and its various wholesale customers, bearing upon the absence of "arm's length bargaining" or other facts and circumstances proper to be considered by the Commission in fixing reasonable rates governing local distribution. Natural Gas Pipeline Co. v. Slattery (1937) 302 U. S. 300, 82 L. ed. 276, 21 P.U.R. (N.S.) 255, 58 S. Ct. 199; Arkansas Louisiana Gas Co. v. Department of Public Utilities (1938) 304 U. S. 61, 82 L. ed. 1149, 23 P.U.R.(N.S.) 337, 58 S. Ct. 770.

[6] By an amendment filed on March 2, 1939, the plaintiff sought to make the Federal Power Commission a party defendant. Summons was served in the District of Columbia on each of the individual members, who promptly appeared specially and moved to dismiss the amended bill and quash the return of service of summons upon each of them.

The Federal Power Commission is one of the executive departments of the National Government located at Washington in the District of Columbia. The provisions of § 51 of the Judicial Code, 28 USCA § 112, clearly exempt this Commission and the individual members thereof, in their official capacity, from suit in any other district. Butterworth v. Hill (1885) 114 U. S. 128, 29 L. ed. 119, 5 S. Ct. 796; Munter v. Weil Corset Co. (1923) 261 U. S. 276, 279, 67 L. ed. 652, 43 S. Ct. 347; Robertson v. Railroad Labor Board (1925) 268 U. S. 619, 624, 69 L. ed. 1119, 45 S. Ct. 621; Appalachian Electric Power Co. v. Smith (1933) 67 F. (2d) 451; Canon v. Robertson (1929) 32 F. (2d) 295; Carr v. Desjardines (1936) 16 F. Supp. 346, 347; Jamestown Veneer & Plywood Corp. v. National Labor Relations Board (1936) 13 F. Supp. 405, 406; Bradley Lumber Co. v. National Labor Relations Board (1936) 84 F. (2d) 97; Yarnell v. Hillsborough Packing Co. (1934) 70 F. (2d) 435, 436; Abe Rafelson Co. v. Tugwell (1935) 79 F. (2d) 653; Webster Co. v. Society for Visual Education (1936) 83 F. (2d) 47; Neirbo Co. v. Bethlehem Shipbuilding Corp. (1939) 103 F. (2d) 765.

The motion filed on behalf of the Federal Power Commission and its individual members must be sustained for lack of jurisdiction over them in this district.

Let formal findings of fact and conclusions of law, together with judgment in conformity herewith, be submitted for entry.

WISCONSIN PUBLIC SERVICE COMMISSION

Re Lodi Telephone Company

[2-U-1478.]

Rates, § 570 — Telephones — Seasonal service.

1. Seasonal telephone rates must necessarily be higher than rural rates in proportion to the length of time that the service is used, if seasonal service is to bear its fair share of costs of operation, p. 256.

Rates, § 570 — Telephone — Seasonal service — Minimum charge.

2. A rate for seasonal telephone service providing for a minimum of six months' service at the regular rural rate, payable in advance, any service for a longer period to be billed at the regular filed monthly rate, was approved, p. 256.

Payment, § 33 — Discontinuance to enforce.

3. The reasonableness of a rule providing for disconnection of telephone service for nonpayment of bills is not open to question, p. 256.

Rates, § 645 — Scope of proceeding.

4. A rate increase for regular telephone service cannot properly be considered in a proceeding to establish seasonal telephone rates where neither the original application of the company nor the Commission's notice of investigation made any mention of such a rate increase, p. 256.

[August 28, 1939.]

APPLICATION *for authority to establish a minimum rate for seasonal service; granted.*

APPEARANCES: Lodi Telephone Company, by Mrs. Catherine S. Hess, Vice President and Manager, and Edward P. Worringer, maintenance man; of the Commission staff: Elmer W. Moke, Assistant Rate Analyst.

By the COMMISSION: At the hearing the application was amended to include the establishment of the following rates and rules:

1. A rate for seasonal service providing for a minimum of six months' service at the regular rural rates, payable in advance. Any service for a longer period to be billed at the regular filed monthly rate.

2. Application of a business rate of $2 per month to business seasonal service.

3. A rule whereby the seasonal subscriber could have the option of paying in monthly instalments if he is a regular subscriber of the company and has a satisfactory credit rating.

4. A monthly, rather than quarterly, basis of billing for all rural service.

5. Application to rural service of the present billing and discount rule for rural service and the adoption of a provision for disconnection if bills are not paid within thirty days.

Up to the present time the company has charged the regular quarterly rural rates for seasonal service. In some cases seasonal subscribers have been required to pay for a minimum of six months' service while others have been required to pay for a minimum of three months' service, thus permitting discrimination. The record indicates that collections, not only on seasonal but on all service, have been poor and that some subscribers have incurred sizable bills. The company now desires to standardize its practices and to adopt rules necessary to the rendition of nondiscriminatory and satisfactory service.

There has been recent development of seasonal cottage service around Lake Wisconsin which it appears will continue. Such service is now rendered to all cottages and may in the future be supplied to pea vineries and other seasonal users. The company wishes to have the proposed rates apply to all seasonal subscribers.

[1, 2] If seasonal service is to bear its fair share of costs of operation, seasonal rates must necessarily be higher than rural rates in proportion to the length of time that the service is used. Seasonal service costs are comprised of costs which are not dependent upon the length of the period of service as well as costs which cease with the cessation of service. We have previously found reasonable a minimum seasonal charge of the nature proposed in item (1) above. (See Investigation on Motion of the Commission of the Rules and Rates of the Commonwealth Telephone Company Relating to Its Seasonal Service, 2–U–1329, opinion and order of January 26, 1939.) We believe that the proposal in this case is equally reasonable and fair.

A change in the billing practice from a quarterly to a monthly basis for all rural service can be accomplished informally by the filing of pro rata rates.

[3] The reasonableness of a rule providing for disconnection for nonpayment of bills is not open to question, similar rules having been approved in many cases.

[4] This company does not have on file a separate rate for rural business service now billed at the regular rural rate. Since neither the original application of the company nor our notice of investigation in this case made any mention of a rate increase for regular service it would be improper for us to consider such increase in this order. Without a differential between the rural residence and the rural business service, we do not think that we could properly establish a differential between seasonal residence service and seasonal business service, both of which are rendered over rural lines.

The Commission finds:

That the present rules and practices of the Lodi Telephone Company with respect to its seasonal service are either unreasonable or unjustly discriminatory and that the rules and the rates applicable to such seasonal service thereunder as herein prescribed, are reasonable and nondiscriminatory.

Industrial Progress

Selected information about manufacturers, new products, and new methods. Also news on personnel changes, recent and coming events.

Philadelphia Electric Plans Expansion Program

PLANS for construction of a steam generating plant which will have ultimate capacity of 500,000 kilowatts were announced recently by the Philadelphia Electric Company.

The station, to cost $45,000,000, will supplement generating capacity installations by the Philadelphia Electric Company of $6,000,000 in 1938 in Philadelphia and $7,000,000 in 1939 at Chester, Pa.

The new development will be known in the Philadelphia Electric system as the Southwark Station. The ultimate capacity of 500,000 kilowatts would be sufficient to take care of the electric needs of nearly two million homes under the average usage now established in Philadelphia. It would be capable of operating more than seven million radio receivers and could light five million 100-watt lamp bulbs.

New Street Lighting Protector Removes Falling Wire Hazards

A NEW safety device which may be used by power companies on series street lighting circuits has been announced by General Electric Company. The apparatus is called a Novalux protector and disconnects the constant-current transformers when an open circuit occurs on the line. This new protective device minimizes the dangers from falling street lighting wires as it breaks the circuit within one half second, thus operating before the wire has a chance to reach the ground.

The circuit on this Novalux protector cannot be closed while the circuit fault remains and a manual reset is required, eliminating the dangers of accidental closing. Completely encased in a rust-resisting, copper-bearing case, the mechanism is fully protected from snow and rain. Since it has no dashpots or oil to become sluggish during cold weather, the mechanism and action is unaffected by temperature variations. Another safety feature of the protector is that the breaker will operate even if the reset lever is frozen, since the breaker trips independently of the reset lever.

Gas Appliance Sales Gain During First Nine Months

GAS appliance sales throughout the country increased substantially during the first nine months of this year (January-September period) as compared to sales figures for the same period last year, it has been reported by C. W. Berghorn, managing director of the Association of Gas Appliance and Equipment Manufacturers, from the national headquarters in New York.

An increase of 42.0 per cent was registered in the sales of gas house heating equipment during the nine-month period as compared to last year's figures.

Gas ranges increased their sales volume 32.4 per cent during the period while gas water heaters realized a rise of 27.3 per cent during the first nine months of 1939 as compared to the same interval of 1938.

New York Utility Doubles Generating Capacity

THE size of Central New York Power Corporation's new steam-electric generating station now under construction at Oswego, New York, will be doubled by the addition of a second 80,000-kilowatt turbine generator similar to the one now being installed there, according to an announcement by Alfred H. Schoellkopf, president of the Niagara Hudson Power Corporation.

As with the first unit, the second turbine generator will be built by the General Electric Company at its Schenectady plant, and the accompanying steam generating boiler will be built by the Babcock & Wilcox Company of New York City.

Utility Accounting Conference Held in Chicago

LEADING representatives of the accounting profession in the utility and other important fields headlined the program of Edison Electric Institute's Third National Accounting Conference at Chicago on November 13th, 14th and 15th. Approximately 1,000 accountants and controllers representing not only the electric utilities, but gas, railways and other public utilities as well, were in attendance.

Bernard S. Rodey, Jr., of the Consolidated Edison Co. of N. Y., Inc., chairman of the institute's General Accounting Committee, acted as general chairman of the conference. Among the many high spots of the three-day meeting were Captain Arthur H. Mayo, of the U. S. Navy, who described how the Navy meets stock control and supply accounting problems; William W. Werntz, chief accountant of the Securities and Exchange Commission, on the relation of the accounting statements and reports to security issues; Dean J.

E. McCarthy, College of Commerce, University of Notre Dame, whose subject was "Realistic Accounts and Statements—For Management—For Labor"; and M. B. Folsom, treasurer of the Eastman Kodak Company, who outlined methods by which existing pension plans may be adjusted to Federal Old Age Insurance.

Charles B. Couchman and Will-A Clader, both from the American Institute of Accountants presented, respectively, "Organization for the Maintenance of Continuing Property Records," and "Accountancy of Tomorrow." Stuart A. Rice, chairman of the Central Statistical Board, Washington, D. C., discussed "Industry Reporting within a Rationalized System of Federal Statistics." Francis J. Brett, representing the Controller's Institute of America, gave an up-to-date concept of the controller's duties. An engineer also gave his views on this subject. H. S. Bennion, vice president and managing director of Edison Electric Institute, spoke on "Cost Accounting Practices in Federal Government Departments."

A. R. Colbert, chairman, Special Committee on Depreciation, National Association of Railroad and Utilities Commissioners, and chief of the Department of Accounts and Finance of the Wisconsin Public Service Commission, outlined "Benefits of Sound Depreciation Practices." H. P. Sparkes, manager of the Meter Division of Westinghouse Electric & Manufacturing Company, described "Sixteen Functions on a Watthour Meter's Chest."

H. C. Davidson and M. D. Hooven presented brief progress reports, the former on the development of financial statistics and factual information regarding depreciation, and the latter on "The Engineer Plans His Part in Depreciation Studies." They were followed by H. C. Hasbrouck, chairman of the Depreciation Committee of the American Gas Association, on "Where Do We Go From Here?" F. L. Griffith spoke on "Utility Arithmetic and the Utility Accountant," and A. J. Bohl on "Proved Economies in Commercial Accounting Operations."

Bernard W. Lynch, president, Standard Gas & Electric Company, Chicago, opened the first of the two general sessions on Tuesday, with an address of welcome, and P. S. Young, chairman of the Executive Committee, Public Service Electric and Gas Company, was the closing speaker on Wednesday.

An informal dinner was held Tuesday evening, at which the speakers were Edward J. Kelly, Mayor of Chicago, Dr. R. B. Kester, professor of accounting, Columbia University, and Reverend John F. O'Hara, president of the University of Notre Dame. Toastmaster was Chas. W. Kellogg, president of Edison Electric Institute.

G-E Announces Testing Set For Sodium Vapor Lamps

To make it easier for lighting companies to determine if apparently "burned out" sodium vapor lamps are actually inoperative, General Electric Company has announced a new testing set. Occasionally a sodium vapor lamp will not operate because of a faulty relay or socket, while the lamp is actually in good condition. Since it is more difficult to check the sockets and relays, the new testing set permits operators to ascertain easily if the lamp is burned out.

The lamp is merely plugged in the set, which operates from 110 volts, 60 cycles, and the normal service circuit turned on. If the lamp operates after the proper cathode preheating period, it is an indication that the fault lies in the socket or relay.

The testing set consists of a transformer and operating panel, mounted in a housing designed for easy handling. The panel contains the voltmeter terminals, a lamp socket, transformer adjusting taps, a line switch, and a cathode preheating switch.

New Chevrolets Gain Wide Acceptance

Public demand for the new 1940 Chevrolets, introduced in the company's 8,600 dealerships throughout the country October 14th, has hit a record high for immediate post-announcement orders, it was reported by W. E. Holler, general sales manager.

Mr. Holler stated that the new cars have won instant approval of the car-buying public, interest being expressed not only in the offerings as a whole, but in individual models.

New B & W Booklet

"Water Cooled Furnaces," is the title of a 32 page bulletin which is now being distributed by The Babcock & Wilcox Company. The bulletin discusses the functions of water cooling for boiler furnaces, describes and shows by appropriate illustrations interesting details of B&W water-cooled furnace constructions and varied typical applications. Copies may be secured direct from the company, 85 Liberty Street, New York, N. Y.

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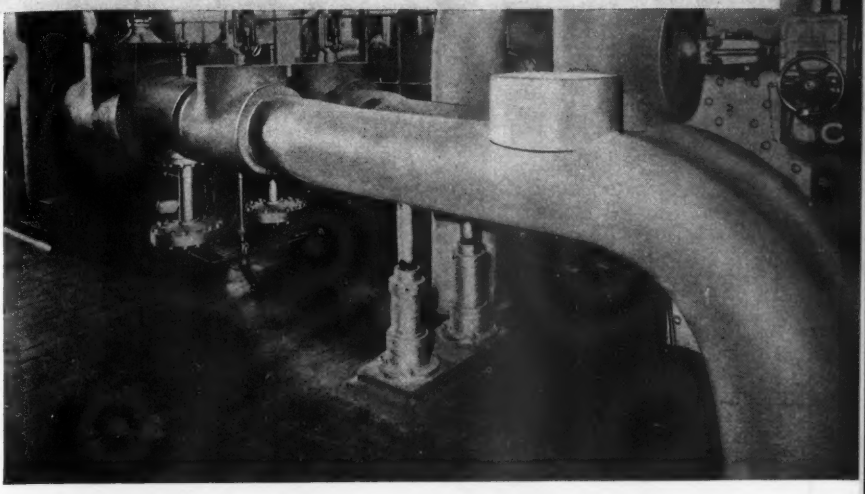

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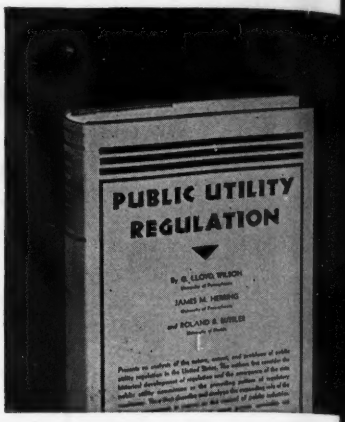

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